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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1067.

EDWARD F. LAWRENCE, AS ADMINISTRATOR OF EDWARD BALLENTINE, DECEASED, AND IN HIS OWN RIGHT, APPELLANT,

vs.

WILLIAM H. NELSON AND GEORGE M. FRENCH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED MARCH 20, 1891.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 14, 1891.

1 Pleas in the circuit court of the United States of America for the northern division of the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Thursday, the twenty-sixth day of February, 1891, in the December term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk.*

WILLIAM H. NELSON and GEORGE M. FRENCH
vs.
EDWARD F. LAWRENCE, Administrator of David Ballentine, Deceased. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division,* } ss:

Be it remembered that on the twelfth day of September, 1889, came the complainants, by their solicitors, and filed in the clerk's office of said court their bond for costs and bill of complaint in said entitled cause; which said bond and bill are respectively
2 in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

Circuit Court, September Term, A. D. 1889.

WILLIAM H. NELSON *et al.*
vs.
EDWARD F. LAWRENCE. } In Chancery.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainants of any costs ordered or adjudged to be paid by them I hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

Dated this twelfth day of September, A. D. 1889.

HENRY S. ROBBINS.

(Endorsed:) Filed Sept. 12, A. D. 1889. Wm. H. Bradley, clerk.

1—1067

3 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

To the honorable judges of the circuit court of the United States for the northern district of Illinois:

William H. Nelson, of the city of Evansville, in the State of Indiana, and a citizen of the State of Indiana, and George M. French, of the city of Hot Springs, in the State of Arkansas, brings this their bill against Edward F. Lawrence, as administrator of the estate of David Ballentine, deceased, and in his own right, the said Lawrence residing in the city of Chicago, within the district aforesaid, and being a citizen of the State of Illinois.

And thereupon your orators complain and say that said David Ballentine departed this life on or about the 10th day of May, 1878, at the city of Hot Springs, State of Arkansas, leaving a paper purporting to be his last will and testament, in which, after making various dispositions of the estate of said Ballentine, James M. Ballentine, Agnes Ballentine, and Henry W. Blodgett were named as executors of said estate and will; that after the death of said Ballentine and on or about the 2nd day of July, 1878, the said paper was exhibited by said James M. and Agnes Ballentine (the said Henry W. Blodgett declined to act as executor thereunder) to the county court of the county of Lake, in the State of Illinois, for probate thereof.

4 And thereupon such proceedings were had thereon that the said paper was duly admitted to probate in said court, and immediately thereupon letters testamentary issued from said court to said James M. and Agnes Ballentine, duly constituting them the executors and executrix of said will and of the estate of the said David Ballentine, deceased; that said James M. Ballentine immediately thereafter entered upon the discharge of his duties as such executor and took possession and control of the large estate left by said David Ballentine; that, as your orators are informed and believe, the real estate belonging thereto was worth one hundred and ninety thousand dollars ($190,000), and the personal estate coming to the hands of the said executor was of the value of one hundred and eighty-one thousand dollars ($181,000), the entire estate being worth about three hundred and seventy thousand dollars ($370,000), and that said estate was abundantly solvent. All of the debts against said estate, as your orators are informed and believe, did not amount to more than twenty thousand dollars ($20,000); all of which debts, except those of your orators, have, as they are informed and believe, been paid in full, either by said executor or by Edward F. Lawrence, as the administrator of said estate, as hereinafter set forth, thus leaving your orators the only creditors of the said estate, as hereinafter stated.

And your orators further show that after the probate of said will as aforesaid certain of the heirs of said David Ballentine, deceased,

filed in the circuit court of Lake county, pursuant to the statute of the State of Illinois, their certain bill in chancery, alleging that said paper so admitted to probate was not the last will and testament of the said David Ballentine.

5 And thereupon such proceedings were had that on or about the 10th day of January, 1880, said court duly entered a decree setting aside said will and the probate thereof; and thereupon the county court of Lake county recalled and set aside said letters testamentary so issued to said James M. Ballentine and Agnes Ballentine as aforesaid and adjudged that said David Ballentine had died intestate, and immediately thereafter and on or about the 10th day of January, 1880, the said county court of Lake county appointed said Edward F. Lawrence as administrator of the estate of the said David Ballentine, deceased; that said Lawrence forthwith qualified as such administrator and at once took possession and control of all the personal estate of the said David Ballentine, deceased, receiving from said James M. Ballentine, as executor, personal estate belonging to said David Ballentine of the value, as your orators are informed and believe, of more than one hundred and seventy thousand dollars ($170,000).

And your orators further show that prior to the death of said David Ballentine they were partners with said Ballentine in the ownership and conduct of a bath-house at the city of Hot Springs and State of Arkansas, and that at the time of the death of said Ballentine said partnership dealings were unsettled and unadjusted between said Ballentine and your orators, the said Ballentine then being indebted to your orators, by reason of said partnership transactions, in large sums of money; that after the said James M. Ballentine had qualified as said executor as aforesaid he refused to come to a settlement with your orators of said partnership matters or to pay to your orators the moneys due them by reason thereof, and owing to said wrongful refusal of said executor your orators were obliged

6 to and did, on or about the 27th day of November, 1878, institute, in the circuit court of the United States for the eastern district of Arkansas, a suit in equity against said Ballentine, as executor of said David Ballentine, for the purpose of settling the accounts and dealings of said partnership and of securing from the estate of said David Ballentine the moneys justly due your orators; that in said suit the said James M. Ballentine was personally served with the process of subpœna of said court and duly entered his appearance to said suit; that when the letters testamentary, issued to said James M. Ballentine, were recalled and cancelled and said Edward F. Lawrence was appointed as administrator of the estate of the said David Ballentine, as hereinbefore stated, the said Edward F. Lawrence, as administrator as aforesaid, was duly substituted as defendant in said suit instead of James M. Ballentine, as executor, and said Lawrence thereupon duly appeared in said court and thereafter conducted said suit for said estate, and, as your orators are informed and believe, said Lawrence, although well knowing that said estate was justly indebted to your orators in the sums claimed by them, conceived the purpose of so protracting said litigation and

so manipulating the said estate as to embarrass and, if possible, defeat your orators in the recovery of their said debts, and to that end the said Lawrence contested the said suit of your orators.

But notwithstanding this such proceedings were had therein that thereafter and on the 25th day of July, 1882, said circuit court for the eastern district of Arkansas entered in said suit its final decree in the words and figures following:

7 "WILLIAM H. NELSON and GEORGE M. FRENCH *vs.* EDWARD F. LAWRENCE, as Administrator of the Estate of David Ballentine, Deceased. } 299. Final Decree.

"This cause came on for final hearing and was argued by counsel; whereupon it is ordered, adjudged, and decreed that the said defendant, Edward F. Lawrence, as administrator of David Ballentine, deceased, is indebted to the complainants, William H. Nelson and George H. French, severally in the sum of one thousand five hundred and seventy-four dollars and forty-five cents (1,574.45), with six per cent. interest thereon from the 26th day of April, 1877, for their several shares of the proceeds and profits of the partnership property of the firm composed of David Ballentine, William H. Nelson, George M. French, and Emory O. Bicknell, set out in the bill of complaint, and which proceeds and profits of said partnership business was received and held by the said David Ballentine prior to his death.

"It is further ordered and adjudged and decreed that said defendant pay said several sums to said complainants out of the assets of the estate of said David Ballentine in his hands remaining to be administered, and that he also pay all the costs of this suit.

"By consent of parties, it is further decreed that if the note for seven thousand dollars made by David B. Elliott, due and payable (in twelve months from April 23rd, 1877, the date thereof received) in part payment of the property sold in this case, which note is secured by a mortgage on the big iron bath-house, has not been paid, that this decree may be satisfied by the assignment of one-fourth interest in the said note and mortgage to said complainants, Nelson and French, and the payment of the costs herein."

8 That after the entry of said decree said Lawrence, in further pursuance of his unlawful scheme to defeat your orators as aforesaid in collecting their said debts, filed in said suit a petition for a rehearing, which was, on or about the 30th day of November, 1883, overruled by said circuit court.

And your orators further show that the said Lawrence, after his said petition for a rehearing had been denied as aforesaid, with the like fraudulent purpose and intent of defeating your orators in the collection of the moneys mentioned in said decree, and having first, as your orators are informed and believe, paid the debts of the other creditors of said estate, falsely and fraudulently represented to the county court of Lake county, on, to wit, the 24th day of January, 1884, that all the debts and claims against said estate had been paid and said estate had been distributed among the heirs lawfully en-

titled thereto, and asked that he, said Lawrence, might be discharged as such administrator, thereby seeking, as your orators believe, by thus manipulating said estate, with the consent and connivance of said heirs, to embarrass and defeat your orators and to avoid the payment of their said decree; that said county court of Lake county, believing and relying upon said false statement of said Lawrence that all debts and claims against said estate had been paid, entered, on the 24th day of January, 1884, an order approving the reports and doings of said Lawrence as administrator, declaring a final settlement of said estate and discharging said Lawrence as administrator thereof.

And your orators further show that, with like fraudulent intent and purpose, on or about the 3rd day of November, 1884, said Lawrence, as administrator of said estate, filed in said United
9 States circuit court for the eastern district of Arkansas his bill of review against your orators, in which said Lawrence set out the decree recovered by your orators against him in said court as aforesaid, and that your orators were about to proceed against him for the recovery of the moneys therein mentioned in the State of Illinois, and in said bill of review prays that, until the matters in said bill of review contained could be enquired into, your orators might be restrained by said court from prosecuting said decree or proceeding in any manner to collect the moneys therein mentioned, and that said original decree so recovered by your orators might be reviewed and reversed for the reasons:

1st. That the facts upon which said decree was rendered were false and contrary to the evidence.

2nd. Because said decree was rendered against said Lawrence without service of process upon him or notice to him, or without any opportunity on his part to make defence thereto.

3rd. Because of newly discovered evidence by said Lawrence in support of the defence to said suit.

4th. Because said Lawrence, being an administrator appointed not by the courts of Arkansas but by the courts of Illinois, could not be sued in Arkansas.

Your orators, as soon as said bill of review was filed and they received notice thereof, desisted and refrained from proceeding to collect said decree until the matters in said bill of review set out could be passed upon by said court, and to that end they appeared in said court and filed their answer to said bill of review, and your orators as expeditiously as possible caused said bill of review to be brought to a hearing, and upon such hearing and on or about the sixteenth (16th) day of April, A. D. 1888, said circuit court for the
10 eastern district of Arkansas dismissed said bill of review for want of equity, by reason whereof the said original decree so recovered as aforesaid by your orators against said Lawrence remains in full force and effect, and your orators are advised that they are entitled to recover from said Lawrence and said estate the amounts therein decreed to your orators, with interest and costs of said suit.

Your orators further show that in said circuit court for the eastern

district of Arkansas the costs mentioned in said original decree against said Lawrence were taxed at the sum of —— dollars ($—), and your orators further show that no part of the sum mentioned in said decree, or the interest thereof, or the cost of said proceeding, have been paid by said Lawrence, or otherwise, to your orators, but that all of said sums are now due to your orators, and that your orators have duly demanded of said Lawrence that he pay said amounts to them, but that said Lawrence wrongfully and fraudulently refuses so to do, falsely pretending that he is no longer compelled to obey said decree of said court, because said county court of Lake county has decreed said estate settled and has discharged him as such administrator, and claims that he has no assets of said estate wherewith to comply with said decree. Your orators further show that they did not, nor did either of them, appear in said county court of Lake county, nor present their said claim in said court or in any way become a party to said proceedings for the settlement of said estate in said county court, nor did they or either of them ever receive, prior to the settlement of said estate and the discharge of said Lawrence as administrator, any notice of the intention of said Lawrence to have a final settlement of said estate decreed by
11 said county court and himself discharged as administrator, nor did your orators or either of them know of said settlement or said discharge of said Lawrence by said court until long and more than two years after said order had been entered.

And your orators are informed and believe that said Lawrence purposely avoided giving your orators notice of said intended application and intentionally suppressed from your orators the knowledge of the said settlement and discharge, for the purpose of carrying out his said fraudulent scheme and purpose to defeat your orators in the collection of their said debts.

And your orators further show that at the time of and after the entry of said decree against said Lawrence as aforesaid said Lawrence had in his possession assets of the estate of said David Ballentine remaining to be administered far in excess of the amount necessary to pay the said several sums in said decree directed to be paid therefrom to your orators, and that said Lawrence never assigned to your orators any part or portion of said note to David B. Elliott, mentioned in said decree, but your orators are informed and believe that said note has been paid by said Elliott to said Lawrence or the estate of said David Ballentine.

Your orators further show that while said Lawrence claims to have paid out and distributed said estate prior to said settlement in said county court, and to have no assets thereof out of which to pay your orators the moneys mentioned in said decree, your orators are informed that such is not the fact, and that said administrator still retains in his hands, with the connivance of the heirs and distribute-s of said David Ballentine, sufficient of said assets to pay and satisfy said decree, but that your orators are unable to ascertain the true state of facts in that regard and will not be able to dis-
12 cover the same or ascertain what assets said administrator has or had which were applicable to the discharge of said

decree or what was or is the true condition of said estate and of said Lawrence's relations thereto and dealings therewith unless said Lawrence shall, under the direction of this court, be required to render an account of said assets and of his actions and dealings therewith.

In tender consideration whereof and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law and are liable only in a court of equity where matters of this nature are properly cognizable, to the end therefore that your orators may have the relief herein prayed and that the said Edward F. Lawrence, as administrator of the estate of David Ballentine, deceased, and in his own right, the defendant herein, may answer make in the premises (but not under oath, answer under oath being hereby waived), and—

1st. That said final settlement of said estate in said county court of Lake county and the discharge by said court of said Lawrence as administrator of said estate may, as against your orators, be held for naught and treated for a nullity.

2nd. That said Lawrence be required to render, by and under the direction of this honorable court, an account of all moneys and other assets received by him as such administrator and of all dispositions made by him of such assets, of all assets now in his hands as such administrator, as well as of all assets which have passed out of his possession or control since the institution of the suit by your orators in said circuit court for the eastern district of Arkansas as aforesaid and since the entry of the said decree therein, as well as of all his other acts and doings in and about the management and possession and disposition by him of the estate of David Ballentine, deceased.

13 3rd. That if upon such accounting it shall be disclosed that said Lawrence has still in his possession assets of said estate which have been reduced to money, that said Lawrence be decreed to pay the same or so much thereof as may be necessary for that purpose to the satisfaction of said decree and the costs of this suit; and if said assets shall not have been reduced to cash, that the same may be transferred and delivered by said Lawrence to a receiver, to be appointed herein by this court, to be by said receiver sold and the proceeds thereof, so far as may be necessary, applied to the satisfaction of said decree and the costs herein.

4th. That if upon said accounting it shall be disclosed that said Lawrence has not now any assets or sufficient assets of said estate to pay said decree and costs herein, and that said Lawrence, since he received notice of the said suit by your orators in said circuit court for the eastern district of Arkansas, has paid out or distributed any of the assets of said estate to or among any of the heirs or distribute-s of said David Ballentine or has otherwise misappropriated or applied said assets to the prejudice of your orators, then that said Lawrence may be adjudged guilty of a devastavit and may be decreed to pay to your orators *de bonis propriis* the sums mentioned in such decree, together with the costs of this suit, or so much

thereof as shall remain unpaid after the application thereto of the assets now in his hands.

5th. And that your orators may have such other and further relief in the premises as to the court may seem meet and equity may require, etc., may it please your honors to grant unto your orators a writ of subpœna to be directed to the said Edward F. Lawrence, as administrator of the estate of David Ballentine, deceased, and
14 in his own right, thereby commanding him at a certain time and under a certain penalty, therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises; and, further, to stand, to perform, and abide such further order, direction, and decree therein as to this honorable court shall seem meet, etc., etc.

WILLIAM H. NELSON AND
GEORGE M. FRENCH,
By TRUMBULL, WILLITS, ROBBINS & TRUMBULL,
Their Solicitors.

HENRY S. ROBBINS, *Of Counsel.*

(Endorsed:) Filed Sept. 12, 1889. Wm. H. Bradley, clerk.

15 On the same day, to wit, on the twelfth day of September, 1889, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the acceptance of service endorsed thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to Edward F. Lawrence, as administrator of the estate of David Ballentine, deceased, and in his own right, Greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of October next, to answer the bill of complaint of William H. Nelson and George M. French this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default. To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the
[SEAL.] Supreme Court of the United States of America, at Chicago aforesaid, this 12th day of September, in the year of our
16 Lord one thousand eight hundred and eighty-nine, and of our Independence the 114th year.

WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

We hereby accept service of within subpœna for the within-named Edward F. Lawrence.

Sept. 12, 1889.

GARDNER, McFADON & GARDNER,
Att'ys for Edward F. Lawrence.

(Endorsed:) Filed Feb'y 25, A. D. 1891. Wm. H. Bradley, clerk.

Afterward, to wit, on the twenty-first day of September, 1889, came the defendant, by his solicitors, and filed in said clerk's office his demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

17 *Demurrer.*

In the United States District Court, Northern District of Illinois.

WILLIAM H. NELSON and GEORGE M. FRENCH
vs.
EDWARD F. LAWRENCE, as Administrator, etc. } In Chancery.

The demurrer of Edward F. Lawrence, personally and as administrator of David Ballentine, defendant, to the bill of complaint.

This defendant, personally and as administrator aforesaid, demurs to the said bill of complaint and for cause of demurrer shows that the complainants have not in and by their said bill made or stated such a case as entitles them in a court of equity to any discovery or relief from or against this defendant, personally or as administrator aforesaid, touching the matters in the said bill or any of such matters. Wherefore this defendant, personally and as administrator aforesaid, demurs to the said bill and to all the matters and things therein contained and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer thereto and prays to be dismissed with his reasonable costs on this behalf sustained.

GARDNER, McFADON & GARDNER,
Defendant's Solicitors.

18 We certify that in our opinion the foregoing demurrer of Edward F. Lawrence, personally and as administrator of David Ballentine, deceased, defendant to the bill of complaint in this cause, is well founded in law and proper to be filed in the above cause.

GARDNER, McFADON & GARDNER,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

Edward F. Lawrence, being first duly sworn, on oath, says that he, as administrator of the estate of David Ballentine, deceased, is the defendant in the above cause; that he has read the foregoing demurrer and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

EDWARD F. LAWRENCE.

Subscribed and sworn to before me this 20th day of September, A. D. 1889.

ALBERT DEAN CURRIER,
[SEAL.] *Notary Public.*

(Endorsed :) Filed Sept. 21, 1889. Wm. H. Bradley, clerk.

19 Afterwards, to wit, on the sixteenth day of December, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

WILLIAM H. NELSON
vs.
EDWARD F. LAWRENCE. } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the defendant's demurrer to the bill herein, and, after hearing the arguments of counsel, the court takes the same under advisement.

20 Afterwards, to wit, on the seventh day of June, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. John M. Harlan, one of the justices of the Supreme Court, is the following entry, to wit:

Order.

WILLIAM H. NELSON *et al.*
vs.
EDWARD F. LAWRENCE, Administrator, &c. } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the defendant's demurrer to the bill, and, after hearing the arguments of counsel, the court takes the same under advisement.

21 Afterward, to wit, on the twenty-sixth day of February, 1891, in the December term of said court 1890, in the record of the proceedings thereof in said entitled cause, before Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

WILLIAM H. NELSON and GEORGE M. FRENCH
vs.
EDWARD F. LAWRENCE, Administrator of David Ballentine, Deceased. } In Chancery.

This cause came on for hearing before the circuit justice and the circuit judge upon the demurrer of the defendant filed September 21, 1889, to the bill and was submitted. Upon consideration the circuit judge was of opinion that the demurrer should be sustained; but, the circuit justice being of the opinion that the demurrer should be overruled, it is ordered and adjudged, in accordance with the opinion of the circuit justice, that the demurrer be overruled, and that the defendant answer said bill.

And thereupon the said defendant electing to stand by said demurrer and admitting in open court that at the time of the
22 entry against him of the decree of July 25, 1882, set forth in the bill herein he, as administrator appointed by the county court of Lake county, State of Illinois, had, after paying all other creditors, sufficient of the estate of David Ballentine remaining in his hands to be administered to satisfy said decree, and that he thereafter distributed said assets among the distributees of said David Ballentine, and the court being now fully advised in the premises and of what judgment to enter herein, it is therefore ordered, adjudged, and decreed that within ten days from the entry of this decree said defendant pay to the complainant William H. Nelson the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents ($3,136.67), and within like time the defendant also pay to the plaintiff George M. French the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents ($3,136.67), and that the plaintiffs recover of the defendant the cost of this suit.

At the hearing of the demurrer to the bill and when the above final order was made the following questions occurred:

1. Whether it was competent for the administrator of David Ballentine, appointed under the laws of Illinois, to appear in the suit brought in the circuit court of the United States for the eastern district of Arkansas by the plaintiffs herein and submit him-
23 self to the jurisdiction of that court in respect to the matters involved in that suit.

2. Whether the binding force of the decree passed in that suit July 25th, 1882, is any less by reason of the fact that the defendant in that suit was the administrator of the deceased, David Ballentine, under appointment by the proper county court in Illinois and did not exercise the functions of such administrator under any appointment by the courts or tribunals of Arkansas.

3. Whether the final decree of the circuit court of the United States for the eastern district of Arkansas rendered July 25, 1882, and as set out in the bill herein is open to attack in the circuit court of the United States, sitting in Illinois, simply upon the ground that the defendant held his office of administrator of Ballentine under the authority alone of the laws of Illinois.

4. Whether the decree in the circuit court of the United States for the eastern district of Arkansas rendered July 25, 1882, is, in the absence of fraud, conclusive upon the defendant herein upon the issue as to whether the estate of Ballentine is indebted to the present plaintiff- and as to the amount of such indebtedness.

5. Whether the decree of the circuit court of the United States for the eastern district of Arkansas passed April 16, 1888, whereby the bill of review filed in that court (as set out in the bill
24 herein) by the present defendant against the present plaintiffs was dismissed, being unreversed, is, in the absence of fraud, conclusive in the present suit as to the amount due the plaintiffs from the estate of Ballentine.

6. Whether the decree of July 25, 1882, recited in the bill, is void simply because it was rendered against an administrator appointed in Illinois, voluntarily appearing therein and submitting himself to the jurisdiction of the court rendering the decree.

7th. Did the decree of the circuit court of the United States for the eastern district of Arkansas rendered July 25th, 1882, bind the defendant as the administrator of David Ballentine, deceased, appointed under the laws of Illinois, and the assets of the estate of said decedent in the State of Illinois in his hands as administrator, in the sense that the defendant was bound to pay said decree without further action against him or said estate by the complainants, and, having settled said estate in and under the order of the county court of Lake county, Illinois, and obtained his discharge as such administrator from said county court without having paid said decree, is he, the defendant, now liable in this action?

8th. Even if the decree of July 25th, 1882, aforesaid was not binding in the sense last above mentioned, did the said decree become binding in the sense last above mentioned by reason of
25 and upon the rendition of the decree of the circuit court of the United States for the eastern district of Arkansas on or about April 16, 1888, dismissing the bill of review in complainants' bill mentioned?

Upon each of these questions and points the circuit justice and the circuit judge were opposed in opinion, and the said points are now at the same term stated and certified under the directions of the said justice and judge, and this certificate is ordered to be entered of record.

JOHN M. HARLAN,
Circuit Justice.
WALTER Q. GRESHAM,
Circuit Judge.

And the defendant now in open court prays an appeal to the Supreme Court of the United States, which is granted and will operate as a supersedeas on filing a bond, with sureties to the satisfaction of the court, in the penal sum of ten thousand dollars, which bond is now accordingly presented and approved by the court.

26 On the same day, to wit, on the twenty-sixth day of February, 1891, there was filed in said clerk's office an appeal bond

in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Edward F. Lawrence, as principal, and Henry A. Gardner, as surety, both of the county of Cook and State of Illinois, are held and firmly bound unto William H. Nelson and George M. French in the full and just sum of ten thousand dollars ($10,000.00), lawful money of the United States, to be paid to the said William H. Nelson and George M. French, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

The condition of the above obligation is such that whereas in a certain suit in equity pending in the circuit court of the United States for the northern district of Illinois and the northern division thereof, in which said suit William H. Nelson and George M. French were and are complainants and Edward F. Lawrence, as administrator of the estate of David Ballentine, deceased, and also
27 in his own right, was defendant, a decree was, on the 26th day of February, A. D. 1891, rendered in said suit in substance and effect as follows, viz:

That said Edward F. Lawrence, within ten days from the entry of said decree, pay to said William H. Nelson the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents ($3,136.67), and within like time that said Edward F. Lawrence pay to the said George M. French the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents ($3,136.67), with costs of suit, from which said decree the said Edward F. Lawrence, in open court, upon the rendition of said decree, prayed and was allowed an appeal to the Supreme Court of the United States, which appeal, in the order allowing the same, was to become a supersedeas upon said Lawrence entering into bond in the penal sum of ten thousand dollars ($10,000.00):

Now, if the said Edward F. Lawrence shall prosecute his said appeal to effect and pay and discharge said decree and answer all damages and costs if said Lawrence shall fail to make his appeal good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD F. LAWRENCE. [SEAL.]
HENRY A. GARDNER. [SEAL.]

Approved.
W. Q. GRESHAM.

(Endorsed:) Filed Feb'y 26, 1891. Wm. H. Bradley, clerk.

28 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the

above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein William H. Nelson and George M. French are complainants and Edward F. Lawrence, administrator of David Ballentine, deceased, and in his own right, is defendant as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court, U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fifth day of March, 1891.

WM. H. BRADLEY, *Clerk.*

29 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To William H. Nelson and George M. French, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the fourth Monday of March, A. D. 1891, pursuant to a decree entered of record in the circuit court of the United States for the northern district of Illinois, wherein William H. Nelson and George M. French, complainants, and Edward F. Lawrence, administrator of the estate of David Balentine, deceased, and Edward F. Lawrence in his own right, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, judge, this 26th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

W. Q. GRESHAM.

30 [Endorsed:] Supreme Court of the United States. Nelson *et al. vs.* Lawrence, administrator, &c. Citation to 4th Monday M'ch term, A. D. 1891.

We, the undersigned, solicitors for the within-named William H. Nelson and George M. French, do hereby acknowledge service of the within citation this 27th day of February, A. D. 1891.

TRUMBULL, WILLETS, ROBBINS & TRUMBULL,
Solicitors for William H. Nelson and George M. French.

31 UNITED STATES OF AMERICA:

In the Supreme Court of the United States, of the October Term, A. D. 1890.

EDWARD F. LAWRENCE, Appellant,
vs.
WILLIAM H. NELSON, GEORGE M. FRENCH, Appellees. } In Equity.

Afterwards, to wit, on the 19th day of March, A. D. 1891, in the said term, before the justices of the Supreme Court of the United

States, comes the said Edward F. Lawrence, by Henry A. Gardner and William McFadon, his attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

Firstly. The circuit court of the United States for the northern division of the northern district of Illinois erred in decreeing and adjudging that said Edward F. Lawrence within ten days from the entry of its said decree pay to the said William H. Nelson the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents.

Secondly. The said circuit court erred in adjudging and decreeing that within ten days from the entry of its aforesaid decree said Edward F. Lawrence pay to said George M. French the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents.

32 Thirdly. The said circuit court erred in ordering and *and* adjudging that the plaintiffs below recover of said Edward F. Lawrence, defendant below, the costs of said suit.

Fourthly. The said circuit court erred in rendering its decree in favor of said William H. Nelson and against the appellant, Edward F. Lawrence.

Fifthly. The said circuit court erred in rendering its decree in favor of said George M. French and against appellant, Edward F. Lawrence.

Sixthly. The said circuit court erred in overruling the demurrer of the defendant below to the bill of complaint of complainants below.

Seventh. The said circuit court erred in holding that it was competent for the administrator of David Ballentine, appointed under the law of Illinois, to appear in the suit brought in the circuit court of the United States for the eastern district of Arkansas, in complainants' said bill of complaint mentioned, and submit himself to the jurisdiction of the said circuit court of the United States for said eastern district of Arkansas in respect to the matters involved in the suit so brought in said last-mentioned court.

Eighth. The said circuit court of the United States for said northern division of said northern district of Illinois erred in holding that the decree of the circuit court of the United States for said eastern district of Arkansas rendered July 25th, 1882, and mentioned in the complainants' bill of complaint herein filed in said circuit court of the United States for said northern division afore-

33 said bound the defendant below (said Edward F. Lawrence), as administrator of David Ballentine, deceased, appointed under the laws of Illinois, and also the assets of the estate of said decedent in the State of Illinois in his hands as administrator, in the sense that said defendant was bound to pay said decree without further action against him or said estate by the complainants filing said last-named bill of complaint, and that not having done so and having obtained his discharge as administrator from the county court of Lake county, Illinois, without having paid said decree that said defendant was liable in the suit of complainants so brought in

said circuit court of the United States for said northern division aforesaid and now pending here on appeal.

Ninth. The circuit court of the United States for the northern division of the northern district of Illinois erred in adjudging and holding that the decree of the circuit court of the United States for the eastern district of Arkansas rendered July 25th, 1882, and in complainants' said bill mentioned bound the assets of the estate of David Ballentine, deceased, in the State of Illinois and in said last-named State, being in the hands of said Lawrence, as administrator of said Ballentine, deceased.

Tenth. The trial court erred in adjudging and holding that the decree of the circuit court of the United States for the eastern district of Arkansas last above mentioned was conclusive in this case upon the issue as to whether the estate of David Ballentine, deceased, was indebted to the appellees respectively and as to the amount of such indebtedness.

Eleventh. The trial court erred in adjudging and holding that the said decree of the circuit court of the United States for the eastern district of Arkansas rendered July 25th, 1882, was enforcible as a judgment in the courts of Illinois against the estate of
34 David Ballentine, deceased, and the assets of said estate in said State of Illinois represented by said Edward F. Lawrence, the administrator thereof.

Twelfth. The trial court erred in giving to the decree of the circuit court of the United States for the eastern district of Arkansas rendered on or about April 16th, 1888, and in complainants' bill in this case mentioned the force of a decree binding upon the estate of David Ballentine, deceased, situated in the State of Illinois and in said State in the hands of said Lawrence, as his administrator, as also upon said administrator himself.

And the said Edward F. Lawrence prays that the judgment aforesaid may be reversed, annulled, and altogether for naught held, and that he may be restored to all things which he hath lost by occasion of the said judgment.

HENRY A. GARDNER,
WILLIAM McFADON,
Attorneys for Appellant, Edward F. Lawrence.

Endorsed on cover: N. Illinois C. C. U. S. No. 1067. Edward F. Lawrence, as administrator of Edward Ballentine, deceased, and in his own right, appellant, *vs.* William H. Nelson and George M. French. Filed March 20, 1891.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

NO. 1067.

EDWARD F. LAWRENCE, AS ADMINISTRATOR OF DAVID BALLENTINE, DECEASED, AND IN HIS OWN RIGHT,
Appellant,
vs.
WILLIAM H. NELSON AND GEORGE M. FRENCH,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

STATEMENT, BRIEF AND ARGUMENT OF APPELLANT.

HENRY A. GARDNER,
WM. McFADON,
SOLICITORS AND ATTORNEYS FOR APPELLANT.

said circuit court of the United States for said northern division aforesaid and now pending here on appeal.

Ninth. The circuit court of the United States for the northern division of the northern district of Illinois erred in adjudging and holding that the decree of the circuit court of the United States for the eastern district of Arkansas rendered July 25th, 1882, and in complainants' said bill mentioned bound the assets of the estate of David Ballentine, deceased, in the State of Illinois and in said last-named State, being in the hands of said Lawrence, as administrator of said Ballentine, deceased.

Tenth. The trial court erred in adjudging and holding that the decree of the circuit court of the United States for the eastern district of Arkansas last above mentioned was conclusive in this case upon the issue as to whether the estate of David Ballentine, deceased, was indebted to the appellees respectively and as to the amount of such indebtedness.

Eleventh. The trial court erred in adjudging and holding that the said decree of the circuit court of the United States for the eastern district of Arkansas rendered July 25th, 1882, was enforcible as a judgment in the courts of Illinois against the estate of
34 David Ballentine, deceased, and the assets of said estate in said State of Illinois represented by said Edward F. Lawrence, the administrator thereof.

Twelfth. The trial court erred in giving to the decree of the circuit court of the United States for the eastern district of Arkansas rendered on or about April 16th, 1888, and in complainants' bill in this case mentioned the force of a decree binding upon the estate of David Ballentine, deceased, situated in the State of Illinois and in said State in the hands of said Lawrence, as his administrator, as also upon said administrator himself.

And the said Edward F. Lawrence prays that the judgment aforesaid may be reversed, annulled, and altogether for naught held, and that he may be restored to all things which he hath lost by occasion of the said judgment.

HENRY A. GARDNER,
WILLIAM McFADON,
Attorneys for Appellant, Edward F. Lawrence.

Endorsed on cover: N. Illinois C. C. U. S. No. 1067. Edward F. Lawrence, as administrator of Edward Ballentine, deceased, and in his own right, appellant, *vs.* William H. Nelson and George M. French. Filed March 20, 1891.

FILED,
SEP 25 1891
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

NO. 1067.

EDWARD F. LAWRENCE, AS ADMINISTRATOR OF DAVID BALLENTINE, DECEASED, AND IN HIS OWN RIGHT,
Appellant,
vs.
WILLIAM H. NELSON AND GEORGE M. FRENCH,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

STATEMENT, BRIEF AND ARGUMENT OF APPELLANT.

HENRY A. GARDNER,
WM. McFADON,
SOLICITORS AND ATTORNEYS FOR APPELLANT.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

NO. 1067.

EDWARD F. LAWRENCE, AS ADMINISTRATOR OF DAVID BALLENTINE, DECEASED, AND IN HIS OWN RIGHT,
Appellant,
vs.
WILLIAM H. NELSON AND GEORGE M. FRENCH,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

STATEMENT OF THE CASE.

This case comes before this court on a certificate of division of opinion between Honorable John M. Harlan, Circuit Justice, and Honorable Walter Q. Gresham, Circuit Judge, holding the Circuit court of the United States for the Northern Division of the Northern District of Illinois.

The points of difference are stated at 31, and the following pages of the record, and they involve the question as to whether a judgment against an administrator of a decedent appointed in Illinois, rendered by the Circuit court of the United States in Arkansas is binding as such, upon the assets of the estate of the same decedent undergoing administration by said administrator before the Probate court of Lake county, Illinois. In other words, the prominent and

probably the controlling question in the case is, whether the decree of a court of a sister state against an administrator appointed in Illinois is binding as a decree of its own force (without any exhibition as provided by the laws of Illinois, of said decree as a claim, before the County court of Lake county, Illinois), *upon the assets of an estate in Illinois, being there administered under the direction of said County court by an administrator of its own appointment.*

Upon a decree of the Circuit court of the United States for the Eastern district of Arkansas, rendered July 25, 1882, against the appellant (the defendant below), as administrator of the estate of David Ballentine, deceased, and in favor of the respective appellees (said judgment being in express terms payable out of the assets of said estate in his hands remaining to be administered), the Circuit court of the United States in Illinois, on February 26, 1891, notwithstanding the fact that the appellees had never exhibited said decree of July 25, 1882, as a claim against the estate of David Ballentine, deceased, in the Probate court (*i. e.*, County court), of said Lake county, as required by the laws of Illinois, rendered a judgment against appellant individually (Rec., 22), and from the judgment last named the present appeal is prosecuted.

The appellees on September 12, 1889, filed in the Circuit court of the United States for the Northern district of Illinois, Northern division, their bill in chancery against the appellant (defendant below), based on said decree of said Circuit court of the United States in Arkansas, and appellant (defendant below), demurred to this bill. At the hearing of the demurrer to said bill and when the final order was made in the case, the questions named in the certificate of division arose. (Rec., 23–25.)

Upon the question of sustaining or not sustaining said demurrer, said judges differed. The opinion of the circuit justice controlling, the demurrer of appellant was overruled, and appellant electing to abide his demurrer and admitting in open court that at the time of entry of the said decree of July 25, 1882, he as administrator, appointed by the County court of Lake county, Illinois, had after paying all other creditors, sufficient of the estate of David Ballentine, deceased, remaining in his hands to be administered to satisfy the said decree, and that he thereafter distributed said as-

sets among the distributees of said David Ballentine, deceased, and thereupon the Circuit court of the United States for the Northern division, Northern district of Illinois, rendered said decree now appealed from against the appellant. Upon this record the principal facts stand admitted by the demurrer, and accordingly it is easy to arrive at the facts out of which the certificate of division arose.

The bill of complaint alleges, in substance, that David Ballentine died May 10, 1878, at Hot Springs, Arkansas, leaving a paper writing, purporting to be his last will and testament, appointing James M. Ballentine, Agnes Ballentine and Henry W. Blodgett as executors; that Henry W. Blodgett declined to act as executor thereunder, and on the second day of July, 1878, the said paper was submitted by the said James M. and Agnes Ballentine to the County court of Lake county for probate; that said paper was admitted to probate in said Lake county, and letters testamentary immediately issued out of said court to said James M. and Agnes Ballentine, constituting them the executor and executrix of the said will and of the estate of said Ballentine, deceased; that said James M. Ballentine immediately entered upon the discharge of his duties as such executor and took possession and control of the large estate left by David Ballentine. The bill alleges upon information and belief that the real estate belonging to the said Ballentine's estate was worth $190,000, and the personal estate coming into the hands of said executor was valued at $181,000, and that the estate was abundantly solvent; that all of the debts against said estate did not amount to more than $20,000, and upon information and belief, the bill alleges that all of the debts of said decedent, except those of complainants in the case, have been paid in full. The bill then alleges that after the probate of said will and pursuant to the statute of the State of Illinois, certain heirs of said Ballentine, deceased, filed in the Circuit court of Lake county, Illinois, their certain bill in chancery, alleging that said paper writing so admitted to probate was not the will of said David Ballentine; that thereupon such proceedings were had that on or about January 10, 1880, said Circuit court of said Lake county entered its decree setting aside said will and, the probate thereof and recalling and setting aside said letters testamentary so issued to said James M. and Agnes Ballentine afore-

said, and adjudging that said David Ballentine had died intestate, and immediately thereafter and on or about the 10th day of January, 1880, said County court of Lake county appointed appellant as administrator of the estate of said David Ballentine, deceased; that said appellant forthwith qualified as such administrator and at once took possession and control of all the personal estate of said David Ballentine, deceased, receiving from the said James M. Ballentine as executor, the personal estate belonging to said David Ballentine of the value of more than $170,000, as complainants were informed and believe. The bill then alleges that prior to the death of said David Ballentine the appellees (complainants below) were partners with said Ballentine in the ownership and conduct of a bath-house at Hot Springs, Arkansas, and that at the time of the death of said Ballentine, said partnership dealings were unsettled and unadjusted between said Ballentine and said appellees; that said Ballentine was indebted to said appellees by reason of said partnership transactions, in large sums of money; that after said James M. Ballentine had qualified as executor as aforesaid, he refused to come to a settlement with complainants of said partnership matters or to pay them the moneys due them by reason thereof, and that owing to said wrongful refusal of said executor, said complainants were obliged to and did on or about November 27, 1878, institute in the Circuit court of the United States for the Eastern district of Arkansas, a suit in equity against said Ballentine as executor of said David Ballentine for the purpose of settling the accounts and dealings of said partnership and of securing from the estate of said David Ballentine moneys due complainants; that in said suit said James M. Ballentine was personally served with process and entered his appearance in the suit; that when the letters testamentary issued to said James M. Ballentine were recalled and canceled and said Edward F. Lawrence was appointed as administrator as aforesaid, of said estate of Ballentine, that said Edward F. Lawrence as administrator as aforesaid, was duly substituted as defendant in said suit instead of James M. Ballentine, as executor, and said Lawrence thereupon duly appeared in said court, and thereafter conducted said suit for said estate, and as your orators are informed and believe, said Lawrence, although well knowing that said estate was

justly indebted to your orators, in the sums claimed by them, conceived the purpose of so protracting said litigation and so manipulating said estate as to embarrass and if possible to defeat your orators in the recovery of their said debts; that in said suit so pending in said Circuit court of the United States for the Eastern district of Arkansas, said last named Circuit court on July 25, 1882, entered its final decree adjudging that said Edward F. Lawrence as admintrator of David Ballentine, deceased, is indebted to complainants, Wm. H. Nelson and George H. French, severally in the sum of $1,574.45 with six per cent. interest thereon from April 26, 1877, for their several shares of the proceeds and profits of the partner ship property of the firm composed of David Ballentine, William H. Nelson, George M. French, Emery O. Bicknell, set out in the bill of complaint, and which proceeds and profits of said partnership business was received and held by said David Ballentine prior to his death; and directing that the defendant pay said several sums to said complainant out of the assets of the estate of David Ballentine in his hands remaining to be administered, and that he also pay all the costs of this suit. (Rec., 7.)

By consent of parties, it was further decreed in said Arkansas suit that if a note for $7,000, made by David P. Elliott, due and payable twelve months from April 23, 1877, received in part payment of the property sold in the case, said last named note being secured by a mortgage on a big iron bath-house which has not been paid; that this decree may be satisfied by an assignment of one-fourth the interest in said note and mortgage to said complainants, Nelson and French, and the payment of costs herein. (Rec., 7.)

The bill then alleges that after the entry of said decree, said appellant filed his petition for a rehearing of said decree, which was on or about November 30, 1883, overruled, and that afterwards, with the intention of defeating appellees in the collection of their moneys named in said decree, and having first paid the debts of the other creditors of the said estate, said appellant falsely and fraudulently represented to the County court of Lake county, on to wit: January 24, 1884, that all the debts and claims against said estate had been paid, and that said estate had been distributed among the heirs lawfully entitled thereto, and asked that he, said Lawrence,

might be discharged as such admistrator, thereby seeking, as appellee's believe, by thus manipulating the estate, with the consent of the heirs, to embarrass and defeat your orators, and to avoid the payment of their said decree, and that said Lake County court, believing and relying upon said false statement of said Lawrence, that all debts had been paid, entered January 24, 1884, an order approving the reports and doings of said Lawrence, as administrator, declaring a final settlement of said estate and discharging said Lawrence as administrator thereof.

The bill further alleges that with like fraudulent intent and purpose on, or about November 3, 1884, said Lawrence, as administrator of said estate, filed in said United States Circuit court for the Eastern district of Arkansas, his bill of review against the appellees, in which said Lawrence set out the decree recovered by said appellees against him in the said last named court as aforesaid, and that said appellees were about to proceed against him for the recovery of the moneys therein mentioned in the State of Illinois; that said appellant in said bill of review prayed that until the matters in said bill could be inquired into, said appellees might be restrained from prosecuting said decree or proceeding in any manner to collect the moneys therein mentioned, and that said original decree so recovered by appellees might be reviewed and reversed for the reasons:

First. That the facts on which the decree was rendered were false and contrary to the evidence.

Second. That said decree was rendered against said Lawrence without service of process upon him or notice to him or without any opportunity on his part to make defense thereto.

Third. Because of newly discovered evidence in support of his defense to the said suit.

Fourth. Because said Lawrence being an administrator not by the courts of Arkansas but by the courts of Illinois, could not be sued in Arkansas.

The bill then avers that said appellees on the filing of said bill of review and notice thereof to them, desisted and refrained from proceeding to collect said decree until the matters in said bill of review set out, could be passed upon by the said court and to that end they appeared in the court and filed their answer to the bill of review and

as expeditiously as possible caused said bill of review to be brought to a hearing, and that upon a hearing thereof on or about April 16, 1888, said Circuit court of the U. S. for the Eastern district of Arkansas, dismissed said bill of review for want of equity, by reason whereof the said original decree recovered by appellees against said Lawrence, remains, as they are advised, in full force and effect, and that they are endeavoring to recover from said estate the amount therein decreed to your orators with interest and costs of suit; that no part of the sum mentioned in said decree or interest thereon or the costs of the proceedings have been paid by said Lawrence or otherwise to the appellees, but that all of said sums are now due to them, and that they have demanded of said Lawrence that he pay said sums to them, but that said Lawrence wrongfully and fraudulently refuses to do so, falsely pretending that he is no longer compelled to obey said decree of said Circuit court, sitting in Arkansas, because said County court of Lake county has decreed said suit settled and has discharged him as such administrator, and claims that no assets of said estate are in his hands wherewith to comply with said decree.

The bill further alleges that the appellees did not nor did either of them appear in said County court of Lake county, nor present their said claim in said court or in any way become a party to said proceedings for the settlement of said estate in said County court, nor did they or either of them ever receive prior to the settlement of said estate, and the discharge of said Lawrence as administrator, any notice of the intention of said Lawrence to have a final settlement of said estate decreed by said County court, and himself discharged as administrator, nor did they or either of them know of said settlement or said discharge of said Lawrence by said court until long and more than two years after said order had been entered, and they were informed and believe that said Lawrence purposely refrained from giving your orators notice of said intended application, and intentionally suppressed from them the knowledge of the said settlement and discharge for the purpose of carrying out his fraudulent scheme and purpose to defeat the appellees in the collection of their said debts.

The bill further alleges that at the time of and after the entry of

said decree against said Lawrence as aforesaid, said Lawrence had in his possesion, assets of the estate of David Ballentine remaining to be administered, far in excess of the amount necessary to pay the several sums in said decree directed to be paid therefrom to your orators, and that said Lawrence never assigned to your orators any part or portion of said note of David B. Elliott mentioned in said decree, but that complainants are informed and believe that said note has been paid by said Elliott to said Lawrence on the estate of said Ballentine.

The bill further alleges that while said Lawrence claimed to have paid out and distributed said estate prior to said settlement in said County court and to have no assets thereof out of which to which to pay your orators the moneys mentioned on the decree, that your orators are informed and believe that such is not the fact, and that said administrator still retains in his hands with the connivance of the heirs and distributees of said David Ballentine, sufficient of said assets to pay and satisfy said decree, but that your orators are unable to ascertain the true state of facts in that regard and will not be able to discover the same or ascertain what assets said administrator has or had which would be applicable to the discharge of said decree, or what was or is the true condition of said estate or said relations thereto and dealings therewith unless said Lawrence thall under the direction of this court be required to render an account of said assets and his actions and dealings therewith.

The bill then makes Lawrence as administrator of the estate of David Ballentine, deceased, and in his own right, defendant, waives answer under oath and prays:

1. That the final settlement of the estate in the Lake County court and the discharge by said court of Lawrence as administrator as aforesaid, may as against your orators be as a nullity.

2. Prays an account against said Lawrence of all dispositions made by him of assets of said estate since the suit was instituted by your orators in said Circuit court for the Eastern district of Arkansas, as well as all his other acts and doings in and about the possession, management and disposition of the estate of David Ballentine, deceased.

3. That if on accounting it shall be disclosed that Lawrence has

still assets of said estate which have been reduced to money, that Lawrence be decreed to pay it upon the decree aforesaid in favor of your orators and the costs of suit; that if he have assets not reduced to money, that the same may be transferred and delivered to a receiver to be appointed by this court, to be by said receiver sold and the proceeds thereof, so far as necessary, applied to the satisfaction of said decree and the costs of suit.

4. That if upon said accounting it shall be disclosed that said Lawrence has not now any assets or sufficient assets of said estate to pay said decree and costs, and that said Lawrence since he received notice of the said suit by your orator in said Circuit court for the Eastern district of Arkansas, has paid it or distributed any of the assets of said estate among any of the heirs or distributees of said David Ballentine, or has otherwise misappropriated or applied said assets to the prejudice of your orators, then that said Lawrence may be adjudged guilty of a *devastavit*, and may be decreed to pay to your orators *de bonis propriis* the sums mentioned in such decree, together with the costs of this suit or so much thereof as shall remain unpaid after the application of all the assets now in his hands thereto.

5. And for such other relief as to equity may seem meet.

The defendant demurring to this bill, and abiding the demurrer upon its being overruled in accordance with the circuit justice's view, and the defendant making an admission in open court that at the time of rendition of the decree of the Circuit court of the United States for the Eastern district of Arkansas, he, as administrator, appointed by the Probate court of Lake county, Illinois, had, after paying all other creditors, assets of the estate of David Ballentine in his hands, remaining unadministered, sufficient to pay the decree of July 25, 1882, which he afterwards distributed among the distributees of David Ballentine, deceased, as we have stated, a division of opinion arose between the Circuit justice and the Circuit judge, the Circuit justice being of opinion that appellant was liable, a decree was rendered against him in the Circuit court of the United States, Northern district of Illinois, Northern division, and the following questions of difference were stated between them, namely (Rec., 22.):

1. Whether it was competent for the administrator of David Ballentine, appointed under the laws of Illinois, to appear in the suit brought in the Circuit court of the United States for the Eastern district of Arkansas by the plaintiffs herein and submit himself to the jurisdiction of that court in respect to the matters involved in that suit.

2. Whether the binding force of the decree passed in that suit, July 25, 1882, is any less by reason of the fact that the defendant in that suit was the administrator of the deceased, David Ballentine, under appointment by the proper County court in Illinois, and did not exercise the functions of such administrator under any appointment by the courts or tribunals of Arkansas.

3. Whether the final decree of the Circuit court of the United States for the Eastern district of Arkansas rendered July 25, 1882, and as set out in the bill herein is open to attack in the Circuit court of the United States, sitting in Illinois, simply upon the ground that the defendant held his office of administrator of Ballentine under the authority alone of the laws of Illinois.

4. Whether the decree in the Circuit court of the United States for the Eastern district of Arkansas, rendered July 25, 1882, is, in absence of fraud, conclusive upon the defendant herein upon the issue as to whether the estate of Ballentine is indebted to the present plaintiff—and as to the amount of such indebtedness.

5. Whether the decree of the Circuit court of the United States for the Eastern district of Arkansas, passed April 16, 1888, whereby the bill of review filed in that court (as set out in the bill herein) by the present defendant against the present plaintiffs was dismissed, being unreversed, is, in the absence of fraud, conclusive in the present suit as to the amount due the plaintiffs from the estate of Ballentine.

6. Whether the decree of July 25, 1882, recited in the bill, is void simply because it was rendered against an administrator appointed in Illinois, voluntarily appearing therein and submitting himself to the jurisdiction of the court rendering the decree.

7. Did the decree of the Circuit court of the United States for the Eastern district of Arkansas rendered July 25, 1882, bind the

defendant as the administrator of David Ballentine, deceased, appointed under the laws of Illinois, and the assets of the estate of said decedent in the State of Illinois, in his hands as administrator, in the sense that the defendant was bound to pay said decree without further action against him or said estate by the complainants, and, having settled said estate in and under the order of the County court of Lake county, Illinois, and obtained his discharge as such administrator, from said County court without having paid said decree, is he, the defendant, now liable in this action?

8. Even if the decree of July 25, 1882, aforesaid was not binding in the sense last above mentioned, did the said decree become binding in the sense last above mentioned by reason of and upon the rendition of the decree of the Circuit court of the United States for the Eastern district of Arkasas on or about April 16, 1888, dismissing the bill of review in complainants' bill mentioned?

HENRY A. GARDNER,
WM. MCFADON,
Attorneys & Solicitors for Appellant.

ASSIGNMENT OF ERRORS.

First. The Circuit court of the United States for the Northern division of the Northern district of Illinois, erred in decreeing and adjudging that said Edward F. Lawrence within ten days from the entry of its said decree pay to the said William H. Nelson the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents.

Second. The said Circuit court erred in adjudging and decreeing that within ten days from the entry of its aforesaid decree said Edward F. Lawrence pay to said George M. French the sum of three thousand one hundred and thirty-six dollars and sixty-seven cents.

Third. The said Circuit court erred in ordering and adjudging that the plaintiffs below recover of said Edward F. Lawrence, defendant below, the costs of said suit.

Fourth. The said Circuit court erred in rendering its decree

in favor of said William H. Nelson and against the appellant, Edward F. Lawrence.

Fifth. The said Circuit court erred in rendering its decree in favor of said George M. French and against appellant, Edward F. Lawrence.

Sixth. The said Circuit court erred in overruling the demurrer of the defendant below to the bill of complainants below.

Seventh. The said Circuit court erred in holding that it was competent for the administrator of David Ballentine, appointed under the law of Illinois, to appear in the suit brought in the Circuit court of the United States for the Eastern district of Arkansas, in complainants' said bill of complaint mentioned, and submit himself to the jurisdiction of the said Circuit court of the United States for said Eastern district of Arkansas in respect to the matters involved in the suit so brought in said last mentioned court.

Eighth. The said Circuit court of the United States for said Northern division of said Northern district of Illinois, erred in holding that the decree of the Circuit court of the United States for the Eastern district of Arkansas, rendered July 25, 1882, and mentioned in the complainants' bill of complaint herein filed in said Circuit court of the United States for said Northern division aforesaid, bound the defendant below (said Edward F. Lawrence), as administrator of David Ballentine, deceased, appointed under the laws of Illinois, and also the assets of the estate of said decedent in the State of Illinois in his hands as administrator, in the sense that said defendant was bound to pay said decree without further action against him or said estate by the complainants' filing said last named bill of complaint, and that not having done so and having obtained his discharge as administrator from the County court of Lake county, Illinois, without having paid said decree, that said defendant was liable in the suit of complainants so brought in said Circuit court of the United States for said Northern division aforesaid and now pending here on appeal.

Ninth. The Circuit court of the United States for the Northern division of the Northern district of Illinois erred in adjudging and holding that the decree of the Circuit court of the United States for the Eastern district of Arkansas rendered July 25, 1882, and in com-

plainants' said bill mentioned bound the assets of the estate of David Ballentine, deceased, in the State of Illinois, and in said last named state, being in the hands of said Lawrence as administrator of said Ballentine, deceased.

Tenth. The trial court erred in adjudging and holding that the decree of the Circuit court of the United States for the Eastern district of Arkansas, last above mentioned, was conclusive in this case upon the issue as to whether the estate of David Ballentine, deceased, was indebted to the appellees, respectively, and as to the amount of such indebtedness.

Eleventh. The trial court erred in adjudging and holding that the said decree of the Circuit court of the United States for the Eastern district of Arkansas rendered July 25, 1882, was enforcible as a judgment in the courts of Illinois against the estate of David Ballentine, deceased, and the assets of said estate in said State of Illinois, represented by said Edward F. Lawrence, the administrator thereof.

Twelfth. The trial court erred in giving to the decree of the Circuit court of the United States for the Eastern district of Arkansas rendered on or about April 16, 1888, and in complainants' bill in this case mentioned, the force of a decree binding upon the estate of David Ballentine, deceased, situated in the State of Illinois, and in said state in the hands of said Lawrence, as his administrator, as also upon said administrator himself.

And the said Edward F. Lawrence prays that the judgment aforesaid, may be reversed, annulled and altogether for naught held, and that he may be restored to all things which he hath lost by occasion of said judgment.

HENRY A. GARDNER,
WM. MCFADON,
Attorneys and Solicitors for Appellant.

BRIEF.

PRELIMINARY STATEMENT.

1.

The case involves the powers, duties and liabilities of an administrator appointed by the County court of Lake county, Illinois, said court being the Probate court of that county; and although a paper writing was in the first instance admitted to probate in the said County court, as the last will and testament of David Ballentine, deceased, yet under the peculiar practice in Illinois, this probate of said paper writing, thus admitted to probate in the said County court as the last will and testament of said Ballentine, deceased, was vacated, annulled and set aside by a chancery proceeding in the Circuit court of Lake county, Illinois, instituted for that purpose, and in said bill of complaint of the appellees filed in the Circuit court of the United States, for the Northern district of Illinois, mentioned. The result of said proceeding in said Circuit court of Lake county, was to leave the estate of David Ballentine, deceased, an intestate estate, and appellant was subsequently, upon a determination in said proceedings in said Circuit court of Lake county, that said estate was intestate, appointed by said County court of Lake county, Illinois, the administrator of said estate and consequently we are dealing with an *intestate estate* being administered in the County court of Lake county, Illinois, by appellant *as administrator*, by appointment of said Lake County court. (Rec., 5.)

2 Starr & Curtiss' Statutes Illinois, p. 2,469, Chap. 148, Sec. 7

SUBDIVISION A.

Such being the case, the rule is clear, that the laws of the State of Illinois govern the accountability of the appellant as administrator of the estate of David Ballentine, deceased, and all assets received by him in that state, and all questions as to the proper dispositions of the assets received by him in the State of Illinois, and all questions

as to the faithful or unfaithful discharge of the duties of appellant, as administrator must be decided solely by the laws of Illinois.

Vaughn v. *Northup*, 15 Peters, 1.
Fay v. *Haven*, 3 Metc., 109.
Kennedy v. *Kennedy*, 8 Ala., 391.
McGehee v. *Polk*, 24 Geo., 406.
Lawrence v. *Elmendorf*, 5 Barb., 73.

The statutes of the State of Illinois provide for the administration of estates through the County or Probate courts of the different counties of that state, to which court the administration of estates is exclusively given by said stautes.

By those statutes the County (or Probate) court of Lake county was vested with power to adjudicate upon and finally determine the rights of all claims to the estate there being administered upon and to award distribution according to the actual and ultimate rights of all parties concerned. As a part of that scheme of administration provided by those laws, it was incumbent upon persons having claims against the estate of David Ballentine, being administered in said Lake County court, to exhibit said claims before said court and have the same duly allowed and classified by said County court.

1 Starr & Curtiss' Statutes of Illinois, pp. 215 and 242, Chap. 3, Secs. 60-73, inc., & 112–114, inc.
Clingman et al. v. *Hopkie*, 78 Ill., 155.
Walker v. *Diehl*, 79 Ill., 473.

and the judgments of said County court allowing claims and awarding final distribution are conclusive.

People v. *Brooks*, 22 App. Court Reports Ill., 600.

So fixed was the necessity of all claimants presenting their claims before said County court for adjudication that the statute of Illinois positively prohibited the administrator paying any claim not allowed by that court except under penalty of having to establish its validity himself, and on failure so to do, of losing his right to be credited with the amount paid in the matter of his administration.

1 Starr & Curtiss' Statutes of Ill., 223, Chap. 3rd, Sec. 73.

The rule is a general one that claims upon an estate must be exhibited for allowance as the local statute directs.

Schouler on Excrs. and Admnrs., Sec. 420.

It follows, then:

Supposing that the decree of the Circuit court for the Eastern district of Arkansas, of date July 25, 1882, be treated as a judgment *in personam* of the court of a sister state, that such judgment of such other state must have been filed as a claim and allowed in the County court of Lake county, Illinois, as a claim, against the estate being administered there by appellant before appellees would have the right to participate in the distribution of assets being there administered by appellant.

Schouler on Excrs. & Admnrs., Sec. 420.
Low v. *Bartlett*, 8 Allen, 259.
Ela v. *Edwards*, 13 Allen, 49.

And until such allowance of such decree of July 25, 1882, as a claim against the estate of David Ballentine in said County court of Lake county, appellant as the administrator of said court, could not have paid said decree out of the assets being administered under its order.

Schouler on Excrs. & Admnrs., Sec. 420.
Walker v. *Diehl*, 79 Ill., 476.
1 Starr & Curtiss Stat. Ill., 223, Chap. 3, Sec. 73.

A different holding and a holding such as contended for by the appellees in this case, would amount to an overturning of the entire scheme of administration provided by the laws of Illinois, and certainly it could not be contended that any such force and effect should be given to the decree of said Circuit court of the United States, for the Eastern district of Arkansas, of date July 25, 1882.

In contending, as we do, that the decree of July 25, 1882, of the Circuit court of the United States, for the Eastern district of Arkansas, if treated as a judgment *in personam* to the fullest extent, should have been filed and allowed in the Probate court *i. e.*, in the County court of Lake county, as a claim against the estate of David Ballentine, deceased, we take a position in entire harmony with the decisions under the clause of the Constitution of the United

States which requires that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of sister states and the act of Congress providing how such records shall be proved, and the effect thereof.

It has been uniformly held under the clause in the Constitution just cited that a judgment of one state cannot be *executed in another state, either as against or the property or persons without first obtaining a new judgment in such other state.* In other words, that a judgment or a decree of a court of one state cannot bind property as such in another state, nor have any extra-territorial force in the direction of so doing.

2 Black on Judgts., Sec. 862.
Reynolds v. *Stockton*, 140 U. S., 254.
McElmoyle v. *Cohen*, 13 Peters, 326.
Cole v. *Cunningham*, 133 U. S., 112.
Elizabeth Savings Trust v. *Gerber*, 34 N. J. Eq., 131.

Again, under the clause in the Constitution just cited, it has been expressly held repeatedly that a judgment rendered in a sister state can have no effect in another state as a domestic judgment in the marshaling of assets.

Smith v. *Union Bank of Georgetown*, 5 Peters, 578.
McElmoyle v. *Cohen*, 13 Peters, 326.
Cameron v. *Wirt*, 4 McCord, 287.
Brengle v. *McClellan*, 7 Gill. and J., 434.
Harness v. *Green*, 20 Mo., 316.

And, further, that the several states of the Union have full control of the estates of deceased persons within their limits.

Youley v. *Lavender*, 21 Wall., 276.
Smith v. *Union Bank of Georgetown*, 5 Peters, 518.

The claim made by appellees as to the force and effect of their decree of July 25, 1882, aforesaid, cannot be correct in view of the authorities just cited, for otherwise the decree of a foreign state would control the disposition of the assets of an intestate estate in Illinois.

A further reason why the decree of July 25, 1882, should have been

filed as a claim against the estate of David Ballentine, deceased, in Illinois, is found in the question of jurisdiction. The Supreme court of Illinois has held that an administrator appointed by one of the courts in Illinois has no power or authority to appear and defend a suit against him as such, in another jurisdiction than in the State of Illinois, and that the decree aforesaid was consequently void, at least as to the assets of the estate being administered in Illinois.

Judy v. *Kelly*, 11 Ill., 211.

Under the clause in the constitution of the United States under consideration, it is settled that the jurisdiction of the court in which a judgment or decree has been rendered against a defendant may always be inquired into when such judgment or decree is sued upon in another state.

Folger v. *Columbian Ins. Co.*, 99 Mass., 273.
Cole v. *Cunningham*, 133 U. S. Rep., 113.
Grover v. *Baker Machine Co.*, 137 U. S., 295.
Thompson v. *Whitman*, 18 Wall., 257.

In view of the decisions of the Supreme court of Illinois last cited, it is apparent that the jurisdictional question is an all important one in this case, and that in case such judgment or decree had been exhibited in the County court of Lake county, Illinois, as a claim against the estate of David Ballentine, deceased, a defense could have been made against its allowance as a claim upon the grounds that the judgment was void for want of jurisdiction.

Judy v. *Kelly*, 11 Ill., 211.
Wernse v. *Hall, Admr.*, 101 Ill., 423.

If the decree of July 25, 1882, is to have the force contended for by appellees, the appellant is cut out of the entire benefit of such defense as far as relates to the assets of the estate within the jurisdiction of the courts of Illinois.

A further reason why the decree of July 25, 1882, should not have the force of the judgment binding upon the assets of the decedent David Ballentine in Illinois, is this : that it is uniformly held that under the clause of the constitution of the United States under consideration, no greater effect is to be given to a judgment in

another state than it would have in the state where it was rendered.

Wood v. *Watkinson*, 17 Conn., 505.

By the laws of Arkansas and the decisions of the Supreme court of that state, it is held that a judgment of the Circuit court of the State of Arkansas would have no greater force than to settle the amount of the claim or debt due the plaintiff and that such judgment would not of its own force and without more, be binding upon an administrator in the distribution of the assets of the estate being administered by one of the Probate courts of said state ; that it would be necessary, in addition, for the claimant to bring his judgment to the notice of the Probate court in some appropriate way before claim could be made by him upon the funds of an estate in process of administration in such Probate court.

Outlaw v. *Yell*, 5 Ark., 472.
Youlee v. *Lavender*, 21 Wall, 271.

And the judgments of such Probate court of Arkansas in the settlement of estates and allowance of claims are final and conclusive as judgments.

Tate v. *Norton*, 4 Otto U. S., 746.
Ringgold v. *Stone*, 20 Ark., 526.
Dooley v. *Dooley*, 14 Ark., 122.
Cossit v. *Biscoe*, 12 Ark., 95.
Shegogg v. *Perkins*, 34 Ark., 117.

If the decree of July 25, 1882, would not, of its own force, and without being exhibited to the proper Probate court of Arkansas, bind an estate in the hands of an administrator in process of administration before one of the Probate courts of said state, the same decree ought not to have any greater force in Illinois in that direction than it would have in the State of Arkansas, where rendered. Giving, in Illinois, to the said decree the like force and effect which the same would have in Arkansas, the decree would be regarded in Illinois merely as settling the amount of an indebtedness but not as binding upon the estate of Ballentine being administered in the County court of Lake county, until the appellees should have ex-

hibited the same to the said County court for the purpose of having it classified, allowed and paid out of the assets of the estate of David Ballentine, and obtained an order from said County court to that effect.

For the foregoing reason, the decree of July 25, 1882, as a foreign judgment should have been exhibited and filed in the County court of Lake county, Illinois, and a new judgment obtained thereon in said Lake County court, to bind the assets there being administered.

SUBDIVISION "B."

1.

The foregoing brief has so far proceeded upon the theory that the decree of July 25, 1882, aforesaid, was an ordinary decree *in personam*, and was to be treated in all respects as a foreign judgment, binding to the extent of any foreign judgment in its operation with reference to the courts of Illinois, but we now proceed to discuss the question from an opposite standpoint, and to deny "*in toto*" that the decree of July 25, 1882, was binding as a judgment upon appellant as administrator of the estate of David Ballentine, deceased, and the assets of said estate in Illinois in his hands as such administrator, being administered under the direction of the County court of Lake county, Illinois.

It was not competent for the appellant as administrator by the appointment of the County court of Lake county, Illinois, to appear in the suit of appellees, brought in the Circuit court of the United States for the Eastern district of Arkansas, and submit himself to the jurisdiction of that court.

Judy v. *Kelly*, 11 Ill., 211.
McGarvey v. *Darnell*, Supreme court of Ill., decision rendered Nov. 1, 1890, not yet reported, but found 25th Northeastern Rep., 1005.
Durrie v. *Blowvelt, Admr.*, 49 N. J. Law, 114.
Caldwell v. *Harding, Admr.*, 5 Blatch., 501.

The rule is uniform that no action can be maintained against an administrator, founded on a debt due from the estate of the de-

cedent, unless such administrator has been qualified by a probate tribunal in the state and county where the suit is brought.

Caldwell v. *Harding, Admr.*, 5 Blatch., 501.
Vaughan v. *Northrup*, 15 Peters, 1.
Mellus v. *Thompson*, 1 Cliff., 125.
Kerr v. *Moore*, 9 Wheat., 565.
Peal v. *Phipps*, 14 How., 368.
Sloan et al. v. *Sloan et al.*, 21 Fla., 569.
Story on the Confl. of Laws, Sec. 513.
Williams v. *Storrs*, 6 John. Ch., 353.
Bealer v. *Dunn*, 3 Head., Tenn., 87.
Vermilya v. *Beattie*, 6 Barb., 429.
Winter v. *Winter*, 1 Miss., 211.
Sparks v. *White*, 7 Humph., 86.
Allsup v. *Allsup*, 10 Yerg., 283.

And where an administrator has sued or been sued upon a cause of action in a state foreign to his appointment, containing no law authorizing a suit by a foreign administrator, or a suit against such foreign administrator, the judgment rendered in favor of, on the one hand and against on the other, such foreign administrator, does not merge the cause of action.

Pond v. *Makepiece*, 2 Metc., 114.
Judy v. *Kelley*, 11 Ill., 211.

So strict is the law upon the subject of confining the right to sue an administrator to the state of his appointment that it has been held that suit cannot be brought against an administrator in a state other than that in which he was appointed, even upon a judgment rendered against him in the state of his appointment.

Pond v. *Makepiece*, 2 Metc., 114.
Goodwin v. *Jones*, 3 Mass., 514.
Cutter v. *Davenport*, 1 Pick., 86.

2.

The rule is fixed and settled that a judgment recovered against an administrator of a deceased person in one state is no evidence of debt in a subsequent suit by the same plaintiff in another state,

either against an administrator, whether the same or a different person appointed there, or against another person having assets of the deceased.

Johnson v. *Powers*, 139 U. S., 159.
Reynolds v. *Stockton*, 140 U. S. Rep., 272.
Aspden v. *Nixon*, 4 How., U. S., 467.
Stacy v. *Thrasher*, 6 How., U. S., 44.
McClellan v. *Meek*, 18 How., U. S., 16.
Lowe v. *Bartlett*, 8 Allen, 254.
Cresswell v. *Slack*, 68 Iowa, 110.

Furthermore, where the same person has been appointed administrator of a decedent's estate in two different states, it has been held that a decree rendered against such person in one of the states is not competent evidence against him in the other state.

Aspden v. *Nixon*, 4 How., U. S., 467.
Ela v. *Edwards*, 13 Allen, 49.

Suppose that the appellant had been appointed by proper legal authority, and by one of the Probate courts within the State of Arkansas, administrator of the estate of David Ballentine, deceased, and the same decree of July 25, 1882, had been recovered against him in the Circuit court of the United States for the Eastern district of Arkansas, it is clear on the decisions last cited that such decree of July 25, 1882, would have no binding effect upon the assets being administered by appellant as administrator under appointment by one of the Probate courts of Illinois, and that such decree rendered by the Circuit court of the United States, for the Eastern district of Arkansas would not have been evidence against appellant as administrator in Illinois of any debt, and that, notwithstanding such decree of July 25, 1882, against him as an Arkansas administrator, the appellees, had they sued in Illinois, must have sued appellant as administrator in the courts of Illinois, not upon the said decree, but upon the original cause of action on which the said decree was recovered.

Now, it being the fact that appellant never was appointed administrator by any court of Arkansas, can it be logically contended that the decree of July 25, 1882, rendered against him in Arkansas,

should have any greater force against him as administrator appointed by and administering the estate of David Ballentine, deceased, in the County court of Lake county, Illinois, than the same decree would have had, had he been properly appointed administrator by the proper court in Arkansas? It seems to us that the statement of the position carries with it its own refutation.

SUBDIVISION C.

We think that we have indicated so many difficulties to result from the decree of December 25, 1882, when considered from either of the standpoints heretofore under consideration, that we would properly raise as the third point in our brief the question of the construction of the decree of July 25, 1882, and our present point is that the terms of the said decree are such as to render construction necessary, and that the proper construction of the decree of July 25, 1882, would be to limit its effect to assets of the estate of David Ballentine, deceased, within the territorial limits of the State of Arkansas.

Jones v. *Geroc*, 6th Jones Eq. N. Ca. Rep., 190.

SUBDIVISION D.

The prayer of the bill is in substance in the alternative that appellant as administrator pay the decree aforesaid out of assets in his hands as administrator of the County court of Lake county, Illinois, and if he has not such assets that he be charged with the payment of said decree as being guilty of *devastavit*, but it is evident, if the decisions we are contending for are correct, that there has been no *devastavit* committed by appellant as administrator in Illinois.

By the laws and decisions of Arkansas a *devastavit* question can only be established by an order of one of its Probate courts directing a particular payment out of the assets of the estate being administered upon by an administrator, and proved by a failure on the part of its administrator to obey such order.

Tate v. *Norton*, 4 Otto, 746.
Outlaw v. *Yell*, 5 Ark., 473.
Gordon v. *State*, 11 Ark., 12.
Brinkley v. *Willis*, 22 Ark., 6.

To establish a *devastavit* against appellant as administrator in Illinois, we insist that it can only be done in the manner determined by the decisions of Arkansas, namely, by showing an order of the Probate court which the administrator has disobeyed in the particular just stated, otherwise the decree of July 25, 1882, would have a greater force in Illinois than it would have in the state of its rendition, and the clause in the constitution above considered only requires that such judgment should have the same effect.

Subdivision E.

The dismissal of the bill of review mentioned in the bill of complainant as having been done on April 16, 1888, could give the decree of July 25, 1882, no greater force in the way of affecting the assets in the hands of appellant as administrator in Illinois and as binding the assets there in his hands in process of administration before the County court of Lake county, Illinois, than it had in the first instance by reason of its rendition.

2 Danl. Ch. Pract., §§ 1582, 1585.

Statutes of Illinois alluded to in Argument.

The citations below are from 1 Starr & Curtiss' Annotated Statutes of Illinois,, chapter 3, pages 199, and following pages.

Granting Letters of Administration.

18. Who entitled to administer—Death to be proved. Sec. 18. Administration shall be granted to the husband upon the goods and chattels of his wife, and to the widow and next of kin to the intestate or some of them, if they will accept the same, and are not disqualified; but in all cases the widow shall have the preference; and if no widow or other relative of the intestate applies within sixty days from the death of the intestate, the County court may grant administration to any creditor who shall apply for the same. If no creditor applies within fifteen days next after the lapse of sixty days, as aforesaid, administration may be granted to any person whom the County court may think will best manage the

estate. In all cases where the intestate is a non-resident, or (and) without a widow, next of kin, or creditors in this state, but leaves property within the state, administration shall be granted to the public administrators of the proper county: *Provided*, that no administration shall in any case be granted until satisfactory proof be made before the County court, to whom application for that purpose is made, that the person in whose estate letters of administration are requested is dead, and died intestate: *And provided further*, that no non-resident of this state shall be appointed administrator, or allowed to act as such.

19. TIME PREFERENCE MUST BE CLAIMED. SEC. 19. Letters of administration upon the goods and chattels, rights and credits of a person dying intestate, shall not be granted to any person not entitled to the same, as husband, widow, next of kin, creditor or public administrator, within seventy-five days after the death of the intestate, without satisfactory evidence that the persons having the preference have relinquished their prior right thereto; but if application is made after the expiration of seventy-five days, the County court may proceed to grant letters to the applicant or any other person, as he may think fit.

23. BOND OF ADMINISTRATOR. SEC. 23. Every administrator, except as is hereinbefore in section 8, provided, shall, before entering upon the duties of his office, enter into bond, with good and sufficient security, to be approved by the County court, and in counties having a Probate court by the Probate court, in a sum double the value of the personal estate, and payable to the people of the State of Illinois, for the use of parties interested, substantially in the following form, to wit:

Know all men by these presents, that we, A B, C D and E F, of the county of and State of Illinois, are held and firmly bound unto the people of the State of Illinois, in the penal sum of dollars, current money of the United States, which payment, well and truly to be made and performed, we and each of us bind ourselves, our heirs, executors and administrators, jointly severally and firmly by these presents.

Witness our hands and seals, this day of 18 .

The condition of the above obligation is such, that if the said A B, administrator of all and singular the goods and chattels, rights and creditors of J K, deceased, do make or cause to be made, a

true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased which shall come to the hands, possessions or knowledge of him, the said A B as administrator, or to the hands of any person or persons for him, and the same so made do exhibit or cause to be exhibited, in the County court (or Probate court) of the said county of agreeably to law, and such goods and chattels, rights and credits do well and truly administer according to law, and all the rest of the said goods and chattels, rights and credits which shall be found remaining upon the account of the said administrator, the same being at first examined and allowed by the court, shall deliver and pay unto such person or persons, respectively, as may be legally entitled thereto; and further do make a just and true account of all his actings and doings therein, when thereunto required by the said court, and if it shall appear that any last will and testament was made by the deceased and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said A B do, in such case, on being required thereto, render and deliver up the letters of administration granted to him as aforesaid, and shall in general do and perform all other acts which may at any time be required of him by law, then this obligation to be void; otherwise to remain in full force and virtue.

Claims Against Estates.

60. Notice—Adjudication. Sec. 60. Every administrator or executor shall fix upon a term of the court, within six months from the time of his being qualified as such administrator or executor, for the adjustment of all claims against such decedent, and shall publish a notice thereof for three successive weeks in some public newspaper published in the county, or if no newspaper is published in the county, then in the nearest newspaper in this state, and also by putting up a written or printed notice on the door of the court house, and in five other of the most public places in the county, notifying and requesting all persons having claims against such estate, to attend at said term of court for the purpose of having the same adjusted (the first publication of said notice to be given at least six weeks previous to said term), when and where such claimant shall produce his claim in writing; and if no objection is made to said claim, by the executor, administrator, widow, heirs or others interested in said estate, and the claimant swears that such claim is just and unpaid, after allowing all just credits, the court may allow such claim without further evidence, but if objection is

made to such claim, the same shall not be allowed without other sufficient evidence. The court may allow either party further time to produce evidence in his favor, and the case shall be tried and determined as other suits at law. Either party may demand a jury of either six or twelve men to try the issue, and it shall be the duty of the county clerk, when a jury is demanded, to issue a *venire* to the sheriff of the county to summon a jury, to be composed of the number demanded.

61. CLAIMS AFTERWARDS PRESENTED—PROCESS. SEC. 61. Whoever has a claim against an estate, and fails to present the same for adjustment at the term of court selected by the executor or administrator, may file a copy thereof with the clerk of the court; whereupon, unless the executor or administrator will waive the issuing of process, the clerk shall issue a summons, directed to the sheriff of the county, requiring such executor or administrator to appear and defend such claim at a term of the court therein specified, which summons, when served, shall be sufficient notice to the executor or administrator of the presentation of such claim.

62. SERVICE—CONTINUANCE. SEC. 62. If the summons is not served ten days before the first day of the term to which it is returnable, the cause shall be continued until the next term of the court, unless the parties shall, by consent, proceed to trial at the return term.

63. TRIAL—COSTS. SEC. 63. Upon the trial of such cause, the same proceedings may be had as if the claim had been presented at the time fixed for the adjustment of claims against the estate, but the estate shall not be answerable for the cost of such proceeding: *Provided*, that when defense is made, the court may, if it shall deem just, order the whole or some part of the costs occasioned by such defense to be paid out of the estate.

64. OATH OF CLAIMANT MAY BE REQUIRED. SEC. 64. The court may, in its discretion, in any case, before giving judgment against any executor or administrator, require the claimant to make oath that such claim is just and unpaid: *Provided*, that the amount of such judgment shall not in such case be increased upon the testimony of the claimant.

65. EVIDENCE. SEC. 65. A judgment regularly obtained, or a

copy thereof, duly certified and filed with the court, shall be taken as duly proven; and all instruments in writing, signed by the testator or intestate, if the handwriting is proven, and nothing is shown to the contrary, shall be deemed duly proved.

66. SET-OFF AGAINST CLAIMANT. SEC. 66. When a claim is filed, or suit brought, against an executor or administrator, and it appears on trial that such claimant or plaintiff is indebted to such executor or administrator, the court may give judgment therefor, and execution may issue thereon in favor of the executor or administrator.

67. CLAIMS NOT DUE. SEC. 67. Any creditor whose debt or claim against the estate is not due, may, nevertheless, present the same for allowance and settlement, and shall thereupon be considered as a creditor under this act, and shall receive a dividend of the said decedent's estate, after deducting a rebate of interest for what he shall receive on such debt, to be computed from the time of the allowance thereof to the time such debt would have become due, according to the tenor and effect of the contract.

68. APPEALS. SEC. 68. In all cases of the allowance or rejection of claims by the County court, as provided in this act, either party may take an appeal from the decision rendered by the Circuit court of the same county, in the same time and manner appeals are now taken from justices of the peace to the Circuit courts, by appellant giving good and sufficient bond, with security, to be approued by the county judge; and such appeals to be tried *de novo* in the Circuit court.

69. JUDGE A WITNESS, OR INTERESTED. SEC. 69. In all cases of matters, pending in the County court, where the judge of that court shall be interested in the same, or is a material and necessary witness, the case shall be transmitted to the Circuit court of the proper county, and there determined as in the County court; and the papers, with the order or judgment of the Circuit court thereon, shall be duly certified and filed in the County court, and have the same effect as if determined in the County court.

70. CLAIMS CLASSIFED—LIMITATIONS. SEC. 70. All demands against the estate of any testator or intestate shall be divided into classes, in manner following, to wit:

First. Funeral expenses.

Second. The widow's award, if there is a widow; or children; if there are children, and no widow.

Third. Expenses attending the last illness, not including physician's bill.

Fourth. Debts due the common school or township fund.

Fifth. All expenses of proving the will, and taking out letters testamentary or of administration, and settlement of the estate, and the physician's bill in the last illness of the deceased.

Sixth. Where the decedent has received money in trust for any purpose, his executor or administrator shall pay out of his estate the amount thus received and not accounted for.

Seventh. All other debts and demands of whatsoever kind, with regard to quality or dignity, which shall be exhibited to the court within two years from the granting of letters as aforesaid, and all demands not exhibited within two years as aforesaid, shall be forever barred, unless the creditors shall find other estate of the deceased not inventoried or accounted for by the executor or administrator, in which case their claims shall be paid *pro rata* out of such subsequently discovered estate, saving, however, to *femes covert*, infants, persons of unsound mind, or imprisoned, or without the United States in the employment of the United States, or of this state, the term of two years after their respective disabilities are removed, to exhibit their claims.

71. PRIORITY OF PAYMENT. SEC. 71. All claims against estates, when allowed by the County court, shall be classed and paid by the executor or administrator, in the manner provided in this act, commencing with the first-class; and when the estate is insufficient to pay the whole of the demands, the demands in any one class shall be paid *pro rata* whether the same are due by judgment, writing obligatory or otherwise, except as otherwise provided.

72. CLAIM OF REPRESENTATIVE. SEC. 72. When an executor or administrator has a demand against his testator or intestate's estate, he shall file his demand as other persons; and the court shall appoint some discreet person to appear and defend for the estate, and, upon the hearing, the court or jury shall allow such de-

mand, or such part thereof as is legally established, or reject the same, as shall appear just. Should any executor or administrator appeal in such case, the court shall appoint some person to defend as aforesaid.

73. ENTRIES—CLASSIFICATION—PAYMENT BEFORE ALLOWANCE. SEC. 73. The County court shall make an entry of all demands against estates, classing the same as above provided, and file and preserve the papers belonging to the same. If an executor or administrator pays a claim before the same is allowed as aforesaid, said court shall require such executor or administrator to establish the validity of such claim by the like evidence as is required in other cases before the same is classed, and be (he) credited therewith.

SETTLEMENT BY ADMINISTRATORS AND EXECUTORS.

112. ANNUAL AND FINAL SETTLEMENTS—NOTICE TO HEIRS. SEC. 112. All executors and administrators shall exhibit accounts of their administration for settlement to the County court from which the letters testamentary or of administration were obtained, at the first term thereof after the expiration of one year after the date of this letter, and in like manner every twelve months thereafter, or sooner if required, until the duties of their administration are fully completed: *Provided*, that no final settlement shall be made and approved by the court unless the heirs of the decedent have been notified thereof in such manner as the court may direct.

113. DISTRIBUTION TO CREDITORS. SEC. 113. Upon every such settlement of the accounts of an executor or administrator the court shall ascertain the whole amount of moneys and assets belonging to the estate of the deceased which have come into the hands of such executor or administrator, and the whole amount of debts established against such estate; and if there is not sufficient to pay the whole of the debts, the moneys aforesaid shall be apportioned among the several creditors *pro rata*, according to their several rights, as established by this act; and thereupon the court shall order such executor or administrator to pay the claims which have been allowed by the court, according to such apportionments. And the court, upon every settlement, shall proceed in like manner until all the debts are paid or the assets exhausted.

114. SETTLEMENT ENFORCED—CONTEMPT—INTEREST ON ASSETS. SEC. 114. The County courts of this state shall enforce the settlements of the estates within the time prescribed by law, and upon the failure of an executor or administrator to make settlement at the next term of the court after the expiration of said time, the court shall order a citation to issue to the sheriff of the county where the executor or administrator resides, or may be found, requiring said executor or administrator to appear at the next term of the court and make settlement of the estate, or show cause why the same is not done; and if an executor or administrator fails to appear at the time required by such citation, the court shall order an attachment requiring the sheriff of the county where the executor or administrator resides, or may be found, to bring the body of said executor or administrator before the court; and upon a failure of an administrator or executor to make settlement under the order of the court after having been so attached, he may be dealt with as for contempt, and shall be forthwith removed by the court, and some discreet person appointed in his stead; the costs of such citation or attachment to be paid by the delinquent executor or administrator, and the court shall enter a judgment therefor, and a fee bill may issue thereon. All moneys, bonds, notes and credits which any administrator or executor may have in his possession or control as property or assets of the estate, at a period of two years and six months from the date of his letters testamentary or of administration, shall bear interest, and the executor or administrator shall be charged interest thereon from said period at the rate of ten per cent. or after two years and six months from any subsequent time that he may have discovered and received the same; unless good cause is shown to the court why such should not be taxed.

115. FAILURE TO PAY OVER — DEVASTAVIT. SEC. 115. If any executor or administrator shall fail or refuse to pay over any moneys or dividend to any person entitled thereto, in pursuance of the order of the County court, lawfully made, within thirty days after demand made for such moneys or dividend, the court, upon application, may attach such delinquent executor or administrator, and may cause him to be imprisoned until he shall comply with the order aforesaid, or until such delinquent is discharged by due course of law; and moreover, such failure or refusal on the part of such

executor or administrator shall be deemed and taken in law to amount to a *devastavit*, and an action upon such executor's or administrator's bond, and against his securities, may be forthwith instituted and maintained; and the failure aforesaid to pay such moneys or dividend shall be a sufficient breach to authorize a recovery thereon.

The following section of Illinois statute is from Section 7, Chapter 148, "Title Wills," Vol. 2, Starr and Curtis Illinois Statutes, page 2,469:

"When any will, testament or codicil shall be exhibited in the County court for probate thereof, as aforesaid, it shall be the duty of the court to receive probate of the same without delay, and to grant letters testamentary thereon to the person or persons entitled; and do all other needful acts to enable the parties concerned to make settlement of the estate at as early a day as shall be consistent with the rights of the respective persons interested therein; *provided, however*, that if any person interested shall, within three years after the Probate of any such will, testament or codicil in the County court as aforesaid, appear, and by his or her bill in chancery, contest the validity of the same, an issue at law shall be made up, whether the writing produced be the will of the testator or testatrix or not; which shall be tried by a jury in the Circuit court of the county wherein such will, testament or codicil shall have been proven and recorded as aforesaid, according to the practice in courts of chancery in similar cases; but, if no such person shall appear within the time aforesaid, the probate as aforesaid shall be forever binding and conclusive on all the parties concerned, saving to infants, *femes covert*, persons absent from the state, or *non compos-mentis*, the like period after the removal of their respective disabilities. And in all such trials by jury, as aforesaid, the certificate of oath of the witnesses at the time of the first probate, shall be admitted as evidence, and to have such weight as the jury shall think it may desire."

Statute of Arkansas Referred to in Argument.

Sec. 4,937. The statutes of Arkansas. Digest, 1884.

Administrators and executors appointed in any of the states, territories or districts of the United States under the laws thereof, may sue in any of the courts of this state in their representative capacity to the same and the like effect as if such administrators and executors had been qualified under the laws of this state.

ARGUMENT.

SUBDIVISION 1.

a.

Under this branch of our argument we shall consider the decree of July 25, 1882, of the Circuit court of the United States for the Eastern district of Arkansas as though it were an ordinary judgment *in personam* (a fact, however, which we deny) and as possessing the full force and effect of any judgment of a sister state *in personam*, in an ordinary case. On this theory of the case we shall endeavor to establish the following positions, viz:

Firstly. That judgments or decrees of the courts of Arkansas are without any binding force or effect upon property within the territorial limits of Illinois.

Secondly. That to make such decree of the Arkansas court binding upon the assets of the estate of David Ballentine, in the hands of appellant, in Illinois, as contended for by appellees, would be to allow to such decree an extra territorial effect as to property in another state and to permit execution of an Arkansas judgment upon property within the limits of Illinois.

Thirdly. That the true rule is directly the opposite and is this, namely, that the judgment of a sister state is without any binding force upon property in another state, and that the judgment of a court in Arkansas could not of itself, and by its own force, be executed upon persons or property in Illinois, and that to reach property in Illinois appellees must have sued upon such decree of July 25, 1882, in the appropriate tribunal within the limits of Illinois.

Fourthly. That inasmuch as the statutes of Illinois provide for the exclusive administration of estates by the County court of the proper county in Illinois, and as the estate of David Ballentine, deceased, was being administered in the County court of Lake county, Illinois, the appellees, to have founded a claim to any portion of the assets of the said estate being there administered, should have sued appellant, as its administrator, in the County court of said Lake county and obtained against the estate of said Ballentine, deceased, a new judgment on their said decree.

Fifthly. That having failed to sue said appellant as administrator in said Lake County court, as last suggested, and never having brought their decree to the notice of that court in any way that appellees had no binding claim upon and were not entitled to be paid out of any assets of said estate being there administered.

In 2 Black on Judgments, Sec. 862, speaking of judgments in other states, it is said:

"Hence, the holder of a judgment desiring to enforce it in another state must sue upon it in the latter state, as the evidence of a debt and recover a judgment upon it; which last judgment will be a judgment of the latter state and as such will be enforced and executed there. * * * They have no extra-territorial force as judgments, for no court can enforce its process or order beyond the limits of the state which ordained and established it."

In *Reynolds* v. *Stockton*, 140 U. S., 254, the doctrine that judgments of one state do not have any extra-territorial force is emphatically upheld in the case of receivers.

A case bearing upon this question is *Elizabethtown Savings Institution* v. *Gerber*, 34 N. J. Equity, 131, and from it we cite:

"The object of the bill in this case is to enforce what the complainants call an equitable lien. The fund in dispute is in court.

"The following are the material facts: In 1876 the Esterbrook Steel Pen Manufacturing Company brought a suit against Simeon J. Ahern in this court, for an account, which resulted in a decree in favor of Ahern for a sum slightly in excess of $500. The sum so found due was, by the order of the court, paid to the clerk June 25, 1878. Prior to this date, and on the 16th of April, 1878, Ahern was adjudged a bankrupt, and shortly afterwards the defendant, Gerber, was appointed his assignee. The complainants recovered a judgment againet Ahern in the Supreme court of the State of New York on the 29th of October, 1877, for over $2,000, and on the 2d of March, 1878, they procured one of the justices of that court to make an order requiring the pen company to pay them any debt which might be due from them to Ahern, up to the amount of their judgment, and also forbidding them from paying the same to Ahern, or to any one for him. At the time this order was made, as well as before, both Ahern and the pen company were citizens of this state. The pen company, however, had an office in the city of New York, where they conducted a part of their business.

"The order just referred to, made by one of the justices of the Supreme court of the State of New York, the complainants con-

tended, created a lien in their favor upon the moneys in court, which they have a right to ask this court to enforce. This lien constitutes their sole right to relief. If they have no lien they have no case.

"The complainants are not judgment creditors. A judgment of a court of record of a sister state is entitled to such faith and credit here, as evidence of a debt, as it would have in the state where it was recovered, but it can have no force or effect here for the purpose of being enforced as a judicial sentence. The judgments of the courts of record of one state are entitled to recognition by the courts of sister states, but they have no extra-territorial force whatever as judgments. Properly authenticated, they afford conclusive evidence of a debt in external jurisdictions in virtue of the constitutional provision entitling the public acts, records and judicial proceedings of each state to full faith and credit in every other state, but they possess no other virtue or efficacy. The order under consideration, construed in its most liberal sense, simply imposes a personal duty—the pen company is directed to pay, and Ahern is forbidden to receive—but no attempt is made to bind or charge the debt due from the pen company to Ahern.

"But the fact which, I think, is utterly destructive of the complainant's theory, is this: The pen company was a corporation created by the laws of this state; its domicile was here, and this, in law, was the *situs* of its personal property, and, being here, such property could not be made subject to the process or orders of the courts of any external jurisdiction. Such courts can exercise no jurisdiction whatever over property located in this state. At this time Ahern was also a citizen of this state. Now, it would be absurd to say, that if an execution has been issued on this judgment, and a levy made by virtue of it, either by a New Jersey or a New York officer, upon Ahern's property in this state, that any lien would have thereby been created, or that such proceeding would, in the slightest degree, have affected his assignee's title to the property. Such process would have possessed no more force as a legal instrument, in this state, than so much blank paper. Is it possible, according to legal principles, to give greater virtue or efficacy to this order? It is simply a substitute for process of execution. It takes the place of an execution, because the thing sought to be reached is not seizable by execution; but it emanates from the same source that an execution would, and can, in the nature of things, have no effect, as a legal process, beyond the limits of the state which created the court that made it. No court can enforce its process or orders beyond the limits of the state which ordained and established it. Even the judgments and decrees of the courts of one nation or state are entitled to no credit or respect in the courts of other nations or states, except in virtue of treaty obliga-

tions or constitutional provisions. The maxim in regard to process issued to enforce judgments in external jurisdiction is, *extra territorium jus dicenti impune non paretur*. The order upon which the complainants' case stands, in my judgment, created no lien in their favor."

We urge that this decision is of special force in the case at bar.

The Supreme court of the United States in the case of *McElmoyne* v *Cohen*, 13 Peters, 324, in speaking about a foreign judgment of a sister state and its force and effect in another state say:

"We observe, though a judgment obtained in the court of a state is not to be regarded in the courts of her sister states as a foreign judgment or as merely *prima facie* evidence of a debt, to sustain an action upon the judgment, it is to be considered only distinguishable from a foreign judgment in this, that by the first section of the fourth article of the constitution, and by the act of May 26, 1790 (section 1), the judgment is a record, conclusive upon the merits, to which full faith and credit shall be given when authenticated as the act of Congress has prescribed. It must be obvious when the constitution declared that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state and provides that Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof, that the latter clause, as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another state. The authenticity of a judgment and its effect depend upon a law made in pursuance of the constitution; the faith and credit due to it as the judicial proceeding of a state, is given by the constitution independently of all legislation. By the law of the 26th of May, 1790, the judgment is made a debt of record, not examinable upon its merits; but it does not carry with it into another state the efficacy of a judgment upon property or persons to be enforced by execution. *To give it the force of a judgment in another state it must be made a judgment there and can only be executed in the latter as its laws may permit.* It must be conceded that the judgment of a state court cannot be enforced out of the state by an execution issued within it."

In Story on the Conflict of Laws, Sec. 609, the author speaking of the clause of the constitution of the United States above referred to, says:

"It did not make the judgments of other states domestic judg

ments to all intents and purposes but only gave a general validity, faith and credit to them as evidence. No execution can issue upon such judgments without a new suit in the tribunals of other states, and they enjoy not the right of priority or privilege or lien which they have in the state where they are pronounced, but that only which the *lex fori* gives to them by its own laws in their character of foreign judgments."

In *Steele* v. *Smith*, 7th Watts & Serg., page 450, which is cited approvingly in *Grover & Baker Machine Co.* v. *Radcliffe*, 137 U. S., 296, the following language is used:

"On the other hand," adds Mr. Justice STORY (Confl., Ch. 14, Sec. 539), "no sovereignty can extend its process beyond its own territorial limits, to subject other persons or property to its judicial decisions. Every exertion of authority beyond these limits is a mere nullity, and incapable of binding such persons or property in other tribunals." And for this he cites *Picquet* v. *Swan* (5 Mason R., 35–42). "Not to multiply authorities on a point so plain, it will be sufficient to add the name of Mr. Burge (1 Confl., 1), who says it is a fundamental principle, essential to the sovereignty of every independent state, that no municipal law, whatever its nature or object, should, *proprio vigore*, extend beyond the territory of the state by which it has been established." And again (3 Burge Confl., 1,044), "that the authority of every judicial tribunal, and the obligation to obey it are circumscribed by the limits of the territory in which it is established. Such is the familiar, reasonable and just principle of the law of nations; and it is scarce supposable that the framers of the constitution designed to abrogate it between states which were to remain as independent of each other, for all but national purposes as they were before the revolution. * * *

"But I would perhaps do the jurisprudence of Louisiana injustice, did I treat its cognizance of the defendants as an act of usurpation. It makes no claim to extra-territorial authority, but merely concludes the party in its own courts, and leaves the rest to the constitution as carried out by the Act of Congress. When, however, a creditor asks us to give such a judgment what is in truth an extra-territorial effect, he asks us to do what we will not, till we are compelled by a mandate of the court in the last resort."

In *Stacy* v. *Thrasher*, 6 How. U. S., 60, speaking of an administrator, it is said:

"The laws and courts of a state can only affect persons and things within their jurisdiction; consequently both as to the administrator and the property confided to him, a judgment in another state is *res inter alios acta*."

In *Turley* v. *Dryfus*, 35th La. An., page 511, it appeared that a judgment had been rendered in the Chancery court of Williamson county, Tennessee, against one Frank Wilson, executor of Wilson, Sr., his father; that said judgment was afterwards brought into Louisiana and made in the latter state the basis of a suit against the same executor, acting by appointment from the proper court in Louisiana, and the court say:

"The judgment is sued upon just as a promissory note would be, simply as an evidence of debt claimed. * * *

"The only remedy which the holder of a Tennessee monied judgment has against persons or property in this state, is to bring suit thereon here, and to obtain the judgment of a Louisiana court for the amount thereof. In such case the only judgment which is or can be *executed* is the judgment of the court of Louisiana. * * *

"As before stated, a Tennessee judgment cannot be executed in Louisiana in any mode. It is sued on here simply as an evidence of a debt. The only inquiry which concerns us here is whether the judgment rendered in Tennessee establishes, as a thing adjudged, in a mode binding upon the testamentary executor in Tennesee that the decedent, James H. Wilson, was indebted to the plaintiff in the suit in the sum of money fixed therein. If such is the faith and credit attached to the judgment in Tennessee, and if, as we have held, it is equally binding upon the executor in this state, it is absolutely entitled to the same credit here. It is the highest evidence of a debt, and unless vitiated by fraud, or impeached as to its validity, or extinguished in some lawful mode, the holder is undoubtedly entitled to a judgment of the Louisiana court against the executor here for the amount thereof. Such judgment will be a Louisiana judgment for money against a Louisiana succession, and will have the effect and execution to which it is entitled under the law of this state."

In *Foster* v. *Glazener*, 21 Ala., 296, it is stated as follows:

"It is a well settled principle of international law that every attempt on the part of one nation or state by its legislation to grant jurisdiction to its courts over persons or property not within its territory is regarded elsewhere as mere usurpation, and all judicial proceedings in virtue of it are held utterly void for every purpose."

In *Yonley* v. *Lavender*, 21 Wall., 276, the Supreme court of the United States say:

"The several states of the Union necessarily have full control over the estates of deceased persons within their respective limits."

Since such control would be lost to a state, if it allowed foreign judgments to bind estates being administered within its limits, it follows that no such force can be given the decree of July 25, 1882, as appellees contend for.

b.

The foregoing authorities would seem to establish that the decree of July 25, 1882, aforesaid, could have no binding force upon assets of the estate of Ballentine in Illinois, but the same conclusion is reached from a series of authorities of a little different kind and character. Various attempts have been made to give force to the lien or priority which a judgment against an administrator or executor has had in the state in which the judgment was rendered as against assets being administered in another state, but the decisions, so far as we know them, are uniform to the effect that under the claims of the constitution of the United States, with reference to giving full faith and credit to the judgments of other states, that they do not enjoy the right of priority or privilege or lien which they have in the state in which they are pronounced, but only that which the *lex fori* gives to them by its own laws in their character of foreign judgments.

Story on Confl. of Laws, 609.
Cole v. *Cunningham*, 133 U. S., 112.

In *Brengle* v. *McClellan*, 7 Gill & Johnson, Md., 435, a judgment of the State of Pennsylvania was under consideration in the courts of Maryland. The defendant in the judgment had died, and by the laws of Pennsylvania the judgment in the settlement of the estates had a preference over the payment of bond, single bills and simple contract debts, and it was contended that such priority should be given to the said judgment of Pennsylvania in the administration of the estate of the same decedent in Maryland, but the Supreme court of Maryland denied the correctness of the position, and held that such judgment of said court of Pennsylvania should stand as to the assets of the decedent being administered in Maryland, where the laws of Maryland placed such judgments, and not in the rank given them by the laws of Pennsylvania.

In another part of the same opinion, said Supreme court of Maryland say:

"To extend the principal further, and give it all the latitude contended for in this case, would give to the jurisdiction of our sister *states*, an extra-territorial operation, and put it in their power to make laws for us, not only without our consent, but contrary to our interior policy and municipal legislation. In favor of a doctrine pregnant with such mischievous consequences, we are aware of no consideration sufficiently operative or powerful to induce its adoption."

Speaking of this clause in the constitution of the United States, the Supreme court of Maryland, said as to any other view in substance as follows:

"And it would in effect put it into the power of one state to pass laws to regulate and control the administration of assets in another state which would be an anomaly in jurisprudence and a violation of our institutions. Strikingly to illustrate the glaring injustice and unreasonable operation of such a doctrine, it is only necessary to suppose that by the laws of this state a legal administration of the assets would distribute the same *pari passu* among all the creditors. Could it be tolerated that the judgment of a sister state, where a different rule prevailed, should come and sweep away the whole assets to the total exclusion of all the home or domestic creditors? And yet such might be the operation of the principal when practically enforced and carried out to all its legitimate consequences."

In *Smith* v. *Union Bank*, 5 Peters, 518, it was held that the effects of an estate in the hands of an administrator were to be distributed according to the law of the country where the representative of the deceased acts; and in this case a preference given to a debt on bond by the laws of Virginia, where the intestate resided when he died, was denied where the administrator was acting, because not allowed by the laws of the place last named.

The opinions last cited shows that a state will not allow an administration going on under its own laws to be interfered with by a jurisdiction of another state.

In *Harkness* v. *Green, Admr.* 20th Mo., 317, a like question was under consideration in the State of Missouri, and it was held that in the payment of the debts of the testator or intestate in Missouri, the judgment of another state, whatever may have been the subject matter of the suit, could not be put upon the footing of judg-

ments rendered in Missouri; that such judgment would rank only as a simple contract debt in the appropriation of the assets of the estate of the deceased person to the payment of his debts.

There is nothing in the laws and constitution of the United States, decides the court in this case, to prevent the state from giving a preference to its own judgments over the judgments of sister states in allowing demands against the estates of decedents.

The same conclusion was reached by the Supreme court of the *McElmoyle* v. *Cohen*, 13 Peters, 312. In *Cameron* v. *The Admr. of Wirts*, 4th McCord, South Carolina, 279, the complainants contended that their judgment which was rendered in North Carolina, should rank as a judgment debt in marshaling the assets of an insolvent estate in South Carolina, but the Supreme court of South Carolina held that the clause in the constitution above mentioned was satisfied when the judgment of the State of North Carolina in the courts of South Carolina was received as evidence of a debt and was allowed full faith and credit in that direction. The Supreme court of South Carolina further held that that clause had not made any change in the nature of the judgment, and held that in the marshaling of the assets of an insolvent estate, a judgment rendered in another state should rank as a simple contract debt.

A further reason why a state could not allow its own domestic policy in the matter of settlement of estates to be invaded by the laws of another state, is suggested in the following, from Rorer on Interstate Law, page 256, as follows:

"In any state declaring an order of payment in probate of a decedent's debts, the term "judgments" will not be construed to include foreign judgments, that is, *judgments existing in another state and not put into judgment in the state wherein the assets are being administered.* * * * The latter are liens in certain cases, whereas the former cannot be, in the nature of things. To allow them equality of grade would be to divide with them the proceeds of judgment liens existing under domestic judgments, thus displacing in part, the priority of lien of such domestic judgment."

The foregoing authorities show that a judgment of the courts of another state could not be binding as such upon assets being administered in Illinois. They also show that a state engaged in the

administering of assets of a decedent or an insolvent, will not allow an order in which its policy provides for the distribution of such assets, to be disturbed by the judgments and priorities given to such in other states.

If a further argument were necessary as to the reasonableness of this position last mentioned, it would only be necessary to ask, where would the decree in question fit into and take hold of the administration going on in Illinois before the County court of Lake county, Illinois? Supposing the assets in Illinois insufficient to have paid all debts of the decedent allowed in Lake county, Illinois, would such decree, if operative of its own force upon assets in Illinois, have taken the first moneys in the hands of the administrator and cut out the expenses of administration, the fees of clerks, and other officials and the claims of such creditors as had their claims allowed by the Probate court of Lake county, Illinois? These are pertinent questions upon the theory contended for by the appellees, and it ought to be a sufficient answer to the position to say that the State of Illinois would not allow an order of its administration to be disturbed by the judgment of another jurisdiction. The State of Illinois has done enough when it has provided, as we shall shortly see it has done, for the suing of its administrator in the County court of Lake county, upon the decree of appellee, and has thus provided for the getting of a new judgment thereon within the jurisdiction of Illinois.

c.

It having been made to appear by the above authorities that the decree of July 25, 1882, could not of its own force bind assets of the estate of David Ballentine, deceased, in Illinois, the question arises, what should the appellees have done to have secured a share of the assets of said estate so being administered in Lake County, Illinois.

In Schouler on Execrs. and Admnrs. Sec. 420, it is stated "Claims upon an estate must be exhibited for allowance as the local statutes direct. * * *

"The general policy indicated is that neither the administrator or the Probate court shall have power to settle a claim not authenticated, presented, allowed and approved according to the statute."

And in *Danzig* v. *Swinney*, 7th Texas, 617, it is held that a decree such as that in question could have no judicial standing before a Probate court until it should be so exhibited and allowed. And it is held in 1 Williams on Executors, page 363, as follows:

"The laws of the state in which the administrator is appointed, govern his accountability for all assets received by him in that state and all questions as to the faithful or unfaithful discharge of his duties must be decided solely by the laws of that state."

And in *Vaughan* v. *Northrup*, 15 Peters, page 6, these words are used:

"On the other hand an administrator is exclusively bound to account for all the assets which he receives under and in virtue of his administration, to the proper tribunals of the government from which he derives his authority and the tribunals of other states have no right to interfere with or to control the application of those assets according to the *lex loci*, hence, it has become an established doctrine that an administrator appointed in one state, cannot in his official capacity sue for any debts due to his intestate in the courts of another state and that he is not liable to be sued in that capacity in the courts of the latter by any creditor for any debts due there by his intestate."

It must follow from these authorities that the appellees should have exhibited their claim in the County court of Lake county, Illinois, and had it allowed as such by that court before they could have any standing to insist upon the payment to them in part of the assets being there administered.

The statutes of Illinois commit the jurisdiction in all matters of settlements of estates of deceased persons, appointments ofguardians and conservators and the settlement of their accounts to the County courts of the different counties in the state.

1 Starr & Curtis, page 245, Chap. 37, Sec. 118.

Every administrator is to fix upon term of court within six months from his being qualified, for the adjustment of claims against the decedent and he must publish a notice for three preceding weeks of the date fixed by him in some newspaper and post five other notices in the county at the time so fixed by the administrator. The claimant must produce his claim in writing and if no objection is made, the County court will allow such claim without further evidence than the oath of the claimant thereto at-

tached, but if objection is made, the County court cannot allow such claim without other evidence. Provision is made for a jury on the demand of either party.

1 Starr & Curtiss, page 215, Chap. 3, Admnr. Sec. 60.

The statute of Illinois further provides, that any person having a claim against an estate and failing to present the same for adjustment at the term of court selected by the administrator, may file a copy thereof with the clerk, and the summons issues to the administrator, and a trial of such claim occurs after th eservice of summons and the court allows or disallows the claim as the evidence may warrant.

Section 63, Chap. 3, total Administration 1 Starr & Curtiss, page 218.

Section 65 on said page 218, of said statute provides that a judgment regularly obtained, the copy duly certified and filed, that the court shall take as duly proven.

Section 68 provides, that all cases of the allowance or rejection of a claim by the County court, as provided in this act, either party may take an appeal to the Circuit court of the county.

Section 70 provides of said Chapter 3, that all demands against the estate of any testator or intestate shall be divided into classes, the first being the funeral expenses, the second, the widow's award (if there be a widow), the third, the expenses attending the last illness.

4th. Debts due the school or township fund.

5th. Expenses of proving will. Physician's bill at the last illness.

6th. Moneys received in trust for any purpose and unpaid or unaccounted for.

7th. All other debts and demands of whatsoever kind with regard to quality or dignity, which shall be exhibited to the court within two years from the granting of letters aforesaid and all demands not exhibited within two years as aforesaid shall be barred unless the creditors shall find the estate not inventoried or ac-

counted for by the executor or administrator, in which case, their claims shall be paid *pro rata* out of such subsequently discovered estate.

Section 71 of said Chapter provides, that all claims against the estate and allowed by the County court, shall be paid by the executor or administrator in the manner provided by this act commencing with the first class, and if the estate is insufficient to pay the whole of the demands, the demands in any one class shall be paid *pro rata* whether the same are due by judgment, written, obligatory or otherwise, except as otherwise provided.

Section 73 provides, that the County court shall make an entry of all demands against estates, classing the same as above provided, and if an executor or an administrator pays the same before the same is allowed as aforesaid, said court shall require such executor or administrator to establish the validity of such claim by the like evidence as is required in other cases before the same is classified and he credited therewith.

Section 112 of said Chapter 3 provides, that all executors and administrators shall exhibit accounts of their administration for settlement to the County court from which their letters were obtained, at the first term thereof after the expiration of one year after the date of letters, and in like manner every twelve months thereafter until the duties of administrator are fully completed.

Section 113 of said Chapter 3 provides, that upon every settlement of the questions of executor or administrator, the court shall ascertain the whole amount of moneys and assets belonging to the estate of the deceased which have come into the hands of said executor or administrator and the whole amount of debts *established against such estate*, and if there is not sufficient to pay the whole of the debts, the moneys aforesaid shall be aportioned among the several creditors *pro rata* according to their several rights as established by this act, and thereupon the court shall order such executor or administrator to pay the claims which have been *allowed by the court according to such apportionment*, and the court upon every settlement shall proceed in like manner until all debts are paid or the assets exhausted.

Section 114 of said chapter provides, that the County courts of

this state shall enforce the settlement of the assets within the times prescribed by law and provides for citing and adjudging the executor if he does not obey the orders of the County court in that behalf.

From the provisions aforesaid, it appears most clearly that the Statutes of the State of Illinois have provided a complete scheme for the administration of every estate before the County court of the proper county in the state. From those statutes it appears that full and complete provision is made for the allowance of claims against estates and among them for the allowance of foreign or any other judgments.

It further appears from one of the sections cited, that an administrator is forbidden to pay any claim out of assets in his hands until it has been allowed by the proper County court and that if he do so, he could not have a credit therefor in his account without himself fully establishing its justice by evidence.

It follows from the provision of the statutes aforesaid that the statutes of Illinois in effect forbid an administrator in Illinois from using his assets to pay claims with, until the proper County court has allowed them as debts against the estate which he is administering. Chap. 3, Sec, 73 aforesaid.

And it is no part of the administrator's duty in Illinois to pay claims against an estate until they have been allowed by the proper county court.

Walker v. *Diehl*, 79 Ill., 476.

And it also follows from the provisions of the statute that it was the duty of appellees, as claimants. to exhibit their decree of July 25, 1882, before the Lake County court aforesaid, and have the same there allowed as against the estate of David Ballentine before they would be entitled to participate in the distribution of assets being there administered by appellant.

Shouler on Excrs., Section 420.

1 Starr & Curtis, Stat. Ill., Chap. 3, "Title administration," Secs. 60, 61, 70 and 113.

By one of the sections of the statute above cited aforesaid, provision is made for an appeal in case any creditor exhibiting a claim

is dissatisfied with the judgment of the County court on a trial of his claim by said County court.

This duty of the creditor to make proof of his claim before the County court was recognized in an early Illinois case, viz:

Walsh v. *Wallace*, 3rd Gilman Illinois Reports, page 497, from which we quote as follows:

"Under our Statute, the proceeds of an estate are to be distributed ratably among the creditors *who establish their demands in proper time.* The recovery of the judgment only establishes the debt of the creditor. He is not entitled to execution. One creditor is not allowed, by obtaining a judgment to absorb the assets to the exclusion of others, who may not be so fortunate as to establish their debt as early. *A certain time is to be given the creditors within which to make proof of their claims*, and then a dividend of the assets is to be declared, in which all of which creditors are to share. See *Greenwood* v. *Spiller*, 2 Scam, 502; *Burnap* v. *Dennis*, 3 do., 478; *McDowell* v. *Wright*, 4 do., 403; *Powell* v. *Kettelle*, 1 Gilm, 491."

From the foregoing provisions of the statute, it is apparent that appellant as administrator in Illinois was completely subject to the order of the County court of Lake county, Illinois, as to Illinois assets, and that that court by statute was restricted to the use of assets to pay debts allowed against the estate.

A confirmation of the view contended for is found in Story on Conflict of Laws, Sec. 529, h., which is in these words:

"It would seem to be the established rule, however, in the National tribunals to allow a foreign creditor to pursue his claim to judgment there without regard to state laws conferring exclusive jurisdiction in the settlement of estates upon particular state courts, *but such judgments must be brought into the Probate court before any distribution is there decreed, or else it would seem impracticable to entitle them to an equal share in the distribution where the assets proved insufficient to pay all the creditors.*"

In New Jersey the probate laws were such that the Probate court is authorized to make an order upon creditors to bring in debts within a certain time, and that upon such order being made all claims must be presented in writing specifying the amount and particulars of their claim.

Under this law, in *Life Ins. Co.* v. *Howell*, 32 N. J. Eq., 145, the Supreme court of New Jersey held that filing a bill to foreclose,

containing a prayer for a decree of deficiency against an administrator, was not equivalent to the presentation of the claim to the Probate court, so as to obviate the bar of the statute.

The court in the case say:

" Not having complied with the provisions of the law, the com-
" plainant is absolutely barred of its action against the adminis-
" trators," citing *Ryan* v. *Flannagan's Estate*, 9 Vroom, 161. The citation last given sustains the other citations above made, and it must be apparent that appellees, notwithstanding their decree of July 25, 1882, aforesaid, were not entitled to share in assets of the estate of David Ballentine, deceased, being administered in Illinois, they not having exhibited any claim against said estate before the County court of Lake county, Illinois.

SUBDIVISION 2.

a.

Thinking that we have shown reasons why the decree of July 25, 1882, should have been filed as a claim against the estate of David Ballentine, deceased, in the County court of Lake county, Illinois, we urge this as a further reason why in this case it was particularly necessary to have done so. The rule is a general one that an administrator of one of the courts in Illinois cannot be sued as defendant in another state. The Supreme court of Illinois, in the case of *Judy* v. *Kelly*, 11 Ill., 211, held that the judgment rendered against an administrator appointed in Illinois could not be enforced in other courts against an estate represented by such administrator, say:

" It is clear that the State of Ohio could not rightfully extend her jurisdiction over the plaintiffs in error in their official character while within her limits, further than to compel them to account for such such assets as they might there have. The plaintiffs in error derive their authority from this state, and they are to be made responsible here only for their acts. That state may grant letters of administration on the estate, and in that way have the effects found within her territory administered, but she cannot by proceeding in her own courts reach the assets in this state or establish claims against the estate that will here be enforced. The debts against the estate are to be adjusted and the effects belonging to it distributed according

to our own laws; but it is insisted that the plaintiffs in error, by entering their appearance to the action in Ohio, submitted themselves to the jurisdiction of the court and cannot now question its authority to pronounce judgment.

"This position would be correct if the proceedings there had been against them personally but as respects them in their representative capacity, we think the effect is otherwise. The grant of administration in this state gave them no control over the estate in Ohio. It did not confer on them any authority to appear and defend the action, any power to go into another jurisdiction and there permit claims to be adjudicated against the estate. Their authority is limited and when they exceed it, their acts will not bind the estate. The appearance being wholly unauthorized by our laws, the judgment that resulted from it is not binding on the estate."

It appears from the foregoing citation that the question of jurisdiction of the Ohio court to render the judgment under consideration by the court in the opinion last cited, was an important one; and in this fact is found a strong reason why the decree of July 25, 1882, could not bind assets in Illinois of its own force.

The Probate court of Lake county, Illinois, would have been entitled to pass upon this question of jurisdiction, had appellees exhibited their decree against the estate of David Ballentine, deceased, in Lake county court aforesaid. The question of jurisdiction is always been open under the clause of the constitution of the United States heretofore under consideration, when a judgment of a sister state is sued upon in another state of the union.

Thompson v. *Whitman*, 18 Wall., 257.
Cole v. *Cunningham*, 133 U. S. Rep., 113.
Fulger v. *Columbia Ins. Co.*, 99 Mass., 273.

If, notwithstanding their failure to exhibit their decree as a claim against the estate of Ballentine, in the Lake county court of Illinois, the appellees can recover upon their decree of July 25, 1882, as adjudged by the Circuit court of the Northern district of Illinois, then their position is this: that had they presented such decree as a claim before the Probate court of Lake county, Illinois, their decree would have been held subject to attack for want of jurisdiction and any claim against the estate of David Ballentine based upon it would have been probably disallowed; but by withholding the exhibition of their claim as they actually did, the appellees entirely

avoided adjudication by the court in Illinois upon this important question of jurisdiction, a question which certainly should be left to the determination of the Illinois court inasmuch as the determination of the question would affect assets being administered within its limits.

A further reason exists in this case for holding that the decree of July 25, 1882, did not operate of its own force, as a decree binding assets of the estate of Ballentine, deceased, in Illinois. It is this: Under the constitutional provision of the United States with reference to full faith and credit being given the judgments of sister states, the decree aforesaid should not be given any greater force than it would have in the State of Arkansas where it was rendered.

Wood v. *Watkinson*, 17th Conn., 500.

And in Arkansas this decree would have been treated as a mere adjudication of the amount due; or in other words, would have settled the existence of the debt, but to make the same binding upon assets being administered in the Probate court, the same must have been collected by being brought under the administration of the proper Probate court in Arkansas and the order of such Probate court for its payment been first obtained. This is so held in *Outlaw* v. *Yell*, 5th Arkansas, 472, and the Supreme court of the United States in *Yonley* v. *Lavender*, 21 Wall., 276, construes the laws of Arkansas the same way. In the opinion in the case last mentioned, are these words:

"The several states of the union necessarily have full control over the estates of deceased persons within their respective limits. * * *

"The legal effect of granting letters testamentary or of administration is to place the whole estate, real and personal, within the custody of the law and leave it there until administration has been completed. In this way the assets are preserved so that there may be a fair and equal division of them among the several creditors according to a scale of priority fixed by law, there being no distinction between resident and non-resident creditors. All demands against deceased persons which are not liens on specific property before the death of the debtor, can only be collected by being brought under the administration of the Probate court. It is true that the debtor is not compelled to resort to the Probate court to settle the existence of his debt, but may by suit in any court of competent jurisdiction obtain judgment on it. The effect of this judg-

ment is to establish the demand against the estate and to remit it to the Probate court for classification by an administrator, and payment under an order of the court either in whole or in part under which the rights of creditors are marshaled."

In *Outlaw* v. *Yell*, 5th Arkansas, 472, speaking of a judgment rendered by a court having jurisdiction concurrent with the Probate court and against an administrator, the Supreme court of Arkansas says:

"The judgment in the Circuit court ascertained and established the claim and the Probate court ascertains the amount of the fund and fixes the order of its appropriation."

And in *Shegogg* v. *Perkins*, 34th Arkansas, 117, the Supreme court of Arkansas holds that the Probate court has the exclusive right to make settlement with administrators which, when confirmed, can never be re-investigated save in chancery for fraud.

It follows from these cases that had there been an administration in progress upon an estate of David Ballentine, deceased, by an administrator appointed by one of the courts of Arkansas, that appellees must, nevertheless, have exhibited their decree of July 25, 1882, before the Probate court of the proper county in Arkansas before they could make claim to an application by such Arkansas administrator of any portion of the assets in his hands as such Arkansas administrator to their judgment, and we understand that the decisions of Arkansas and Illinois are at one upon this point.

Darling v. *McDonald*, 101 Ill., 370.

If the legislation and decisions of Arkansas are such that an administrator may be sued for a debt of the estate in a higher court of that state, having concurrent jurisdiction with its Probate court, and a judgment be rendered in such suit against such administrator of such estate, and if after the rendition of such judgment, the person in whose favor the same was rendered, *must nevertheless*, to bind the assets in the hands of that administrator within the State of Arkansas, bring such judgment after its rendition to the notice of the proper Probate court, and obtain the order of that court decreeing its payment before any portion of the assets in the hands of such Arkansas administrator, would be applicable to the payment of such judgment,

then we say that no greater force should be given to the decree of July 25, 1882, as against assets of the estate in question in Illinois than the same would have within the limits of Arkansas, as against assets there being administered, and as it appears that such decree should in addition to its rendition, have been brought before the Probate court of the proper county in Arkansas, to have become entitled to any portion of the estate of a decedent in the hands of the Arkansas administrator, we urge that no greater force can be claimed for said decree in Illinois than it had in Arkansas, and that the failure of appellees to bring their decree to the notice of the County court of Lake county, Illinois, barred them of any right to participate in any share of the assets of the estate of David Ballentine, deceased, being there administered, and we urge further that inasmuch as the settlement of an estate by an administrator when confirmed by the Probate court, is conclusive in Arkansas, the fact that appellant as administrator, has made full settlement with the County court of Lake county, Illinois, as its administrator, and been fully discharged by said County court as said administrator, must be as to appellees moving under their judgment in any court in Illinois, conclusive and binding upon them as to the full and final administration of said estate in Illinois.

Bostwick v. *Skinner*, 80 Ill., 147.
Stone v. *Wood*, 16 Ill., 384.
3 Red. on Wills, § 46.

In harmony with the decisions last cited, is the case of *People* v. *Brooks*, 22 Ill. App. Court Reports, 600, from which we quote:

"Personal property descends to the executor or administrator, to be administered upon by him, and such administration consists in collecting the estate, converting it into cash, and distributing it to creditors, devisees, heirs and other distributees, according to their respective rights. The jurisdiction of matters of administration is committed by law to the Probate court, and that court is vested with power to adjudicate upon and finally determine the rights of all claimants to the estate, and to award distribution according to the actual and ultimate rights of all parties concerned. It is the policy of the law that the conflicting interests of all claimants to personal property should be abjudicated upon and finally settled by that court, so that the residuum, after the payment of debts, may be distributed among those entitled, free from incumbrances and charges. It thus becomes incumbent upon all persons *having any claim to dis-*

tribution of personal estate, and who are laboring under no disability to resort to that court and submit their several claims and rights to its decision, and *its judgments awarding final distribution* unless attacked by a direct proceeding, are conclusive as to the ownership of the property distributed.

"It follows, from the foregoing principles, that the creditors will not be permitted to lie by and remain silent during the course of the administration, and then seek to follow personal property into the hands of the heir or other distributee, and wrest it from him for the purpore of applying it to their debts. *The judgment of the Probate court, awarding distribution is a judgment in rem*, and is binding on all creditors and others who had an opportunity to be heard."

And the same holding is found in the decisions of the Supreme court of Arkansas upon the conclusiveness of decrees of settlement of Probate courts there.

Tate v. *Norton*, 4 Otto, 746.
Shegogg v. *Perkins*, 34 Ark., 117.
Ringold v. *Stone*, 20 Ark., 526.
Dooley v. *Dooley*, 14 Ark., 122.

The authorities cited establish two propositions very clearly:

First. That the judgments of a court in Arkansas have no extra-territorial force as to property in Illinois, and that if execution of such judgment be sought in Illinois, a new judgment must be obtained upon it in the courts of that state.

Second. In the administration and distribution of assets being administered within the State of Illinois, the laws of Illinois are supreme, and that no state will allow an order, prescribed by its laws for the distribution of assets being administered within such state to be interfered with by decrees or judgments rendered in another state.

These two propositions of law being established, it follows that the seventh of the questions embraced in the certificate of division in this case, and which we bring forward first as being the most comprehensive of all the questions in the case, should have been answered in the negative. On no theory could a judgment have passed against appellant individually in the case at bar in the Circuit court of the United States, for the Northern district of Illinois, Northern division, except upon the theory that the decree of July 25, 1882, bound assets being administered by appellant in Illinois, and as appellant, as administrator, distributed said last mentioned

assets under order of the County court of Lake county, Illinois, without paying said decree of July 25, 1882, that he made himself personally liable.

SUBDIVISION 3.

a.

Thus far we have argued the questions involved as though the decree of July 25, 1882, of the Circuit court of the United States for the Eastern district of Arkansas was to be treated as any ordinary judgment of a sister state of which execution was sought in the court of Illinois, but while for the time being we have argued that said decree was to be treated as an ordinary judgment of a sister state, we are far from admitting that such is the case. On the contrary, we assert that the decree of the Circuit court of the United States for the said Eastern district of Arkansas, is not as against the appellant as administrator in Illinois, any evidence of any indebtedness whatever; that notwithstanding the fact that appellees had obtained their decree in Arkansas, the moment they wished to proceed against the estate of David Ballentine in Illinois they must have sued upon the original consideration and not upon the decree itself.

A complete review of the authorities upon this point is to be found in the case of *Johnson* v. *Powers*, 139 U. S. Sup. Court Rep., 159, which is affirmed in the case of *Reynolds* v. *Stockton*, 140 U. S., 254.

The statement of the law in such cases is laid down in *Johnson* v. *Powers*, 139 U. S., 159, in these words:

"A judgment recovered against an administrator of a deceased person in one state is no evidence of debt in a subsequent suit by the same plaintiff in another state, either against the administrator, whether the same or a different person appointed there, or *against any other person having assets of the deceased.*"

And the following cases are cited, supporting the position thus announced, viz:

Aspden v. *Nixon*, 4 How., 467.
Stacy v. *Thrasher*, 6 How., 44.
McLean v. *Meek*, 18 How., 16.
Low v. *Bartlett*, 8 Allen, 259.

The general ground upon which it is held that a judgment against an administrator in one state is no evidence against an administrator in another state, is that there is no privity between the respective administrations and while a difference is sometimes made, where the parties are executors under a will (a privity being held by some courts to exist in the case of executors, which is uniformly denied in cases of administrations), in so far as administrators are concerned, we believe that it is uniformly held to be the rule as to administrations in different states that there is no privity and that a judgment against an administrator in one state is no evidence of a debt as against an administrator in another state.

Stacy v. *Thrasher*, 6 How., 44.
McLean v. *Meek*, 18 How., 16.
Aspden v. *Nixon*, 4 How., 467.
Brody, Admr. v. *Bickley, Admr.*, 2 Rawle, 431.

Where the same person is appointed administrator in different states, the rule is nevertheless the same, that a judgment against the same person as administrator in one state is no evidence against him as administrator if suit be brought in the other state.

Aspden v. *Nixon*, 4 How., 467.
McLean v. *Meek*, 18 How., 16.
Ela v. *Edwards*, 13 Allen, 48.

We shall hereafter show by the most ample authority, that an administrator appointed by the Probate court in Illinois has no authority to appear and defend as administrator of his intestate, a suit against him as administrator in another jurisdiction outside of Illinois.

If the appellant had been appointed administrator of the estate of David Ballentine, deceased, in Arkansas, and also by the Probate court of Illinois, it is evident from the foregoing authorities that the judgment or decree of July 25, 1882, would have been no evidence of any debt against appellant as administrator under his Illinois appointment, and if appellant had been sued as administrator in Illinois by the appellees, they must have sued, not upon their decree aforesaid, but upon the original consideration itself on which the decree was founded, and they must also have sued within such time

in Illinois as to have prevented the bar of the Illinois statute of limitations, which is two years (as we have seen by the quotations of its statutes) from the date of the grant of letters of administration.

Now, can it be contended for a moment that the mere fact that appellant was not legally appointed administrator in Arkansas when he appeared and defended the suit in which the decree of July 25, 1882, was rendered, can give to the decree of July 25, 1882, aforesaid, any greater breadth or scope as evidence of indebtedness as against the administration of David Ballentine going on in the County court of Lake county, Illinois, than such decree would have had, had appellant been appointed administrator by one of the local courts in Arkansas.

We think the mere fact that appellant intervened in the suit of the appellees in the Circuit court of the United States for the Eastern district of Arkansas, as administrator under his Illinois appointment, and not under any appointment by a local court in Arkansas, cannot change the effect of the decree of July 25, 1882, when the question of how it is to affect the administration in Illinois is under consideration.

If, as we have seen under the foregoing authorities, the decree of July 25, 1882, would not be evidence against appellant as administrator when sued by appellees in Illinois, had appellant been validly appointed administrator by the proper Probate court in Arkansas, it must clearly follow that the failure of appellant to become appointed as administrator of the estate of David Ballentine, deceased, by some local court of Arkansas before he appeared to defend the suit of appellees, could not change the rule above announced, and that the decree rendered against him in Arkansas could be no evidence of debt as against administration going on in Lake county, Illinois, nor as against the appellant as administrator under his Illinois appointment, when sued in any court in Illinois.

We are not left to general reasoning to uphold the correctness of the position last announced. The Supreme court of Illinois, speaking of the power of one of its own administrators, in the case of *Judy* v. *Kelley*, 11 Ill., 111, is an adjudication expressly in point, and that case seems to be very substantially on all-fours with the present one. An action for debt was brought against Illinois ad-

ministrators upon a judgment rendered against them as administrators of Wm. Allington, deceased, in Ohio; the judgment was against them *de bonis testatoriis*. The decision last mentioned, from which we are about to quote, holds that such judgment cannot be enforced in the courts of Illinois against the estate left by such administrator, and sustains the position that the foreign decree in this case is no evidence of an indebtedness in favor of appellees as against appellant and the estate being administered by him in Illinois.

We quote from the language of the decision last mentioned, as follows:

"A grant of administration in one country does not confer on an administrator any title to the property of the intestate situated in another country. He has no authority over, nor is he responsible for, any effects of the estate that may be beyond the jurisdiction. In administering the estate he acts only in reference to the effects within the jurisdiction, and the debts that may there be presented against the estate. In his official capacity he can neither sue nor be sued out of the country from which he derives his authority, and to which he is alone amenable. If he wishes to reach property or collect debts belonging to the estate in a foreign country, he must there obtain letters of administration, and give such security, and become subject to such regulations as its laws may prescribe. So, if a creditor wishes to bring a suit in order to satisfy his debt out of property in another jurisdiction, administration must there be first obtained. See Story's Conflict of Laws, section 513, and the numerous authorities there cited. There are a few cases in this country to the effect that a foreign executor may be sued in another jurisdiction, and be there made liable to the extent of the assets he may have with him; but the cases go no further than to sustain the action for the purpose of subjecting such assets to the payment of the particular debt. *Campbell* v. *Tousey*, 7 Cowen, 64; *Swearingen's Ex'rs* v. *Pendleton's Ex'rs*, 4 Sergeant & Rawle, 389; *Evans* v. *Tatem*, 9 do., 252; *Bryan* v. *McGee*, 2 Washington's C. C. R., 337. It may be doubted whether these decisions can be supported on principle or authority, but conceding their correctness, they have no direct bearing on this case. The attempt here is to enforce against an estate a judgment rendered in Ohio against administrators appointed in this state. It is clear that the State of Ohio could not rightfully extend her jurisdiction over the plaintiffs in error in their official character while within her limits, further than to compel them to account for such assets as they might there have. The plaintiffs in error derive their authority from this state, and they are to be made responsible here only for their acts. That state

may grant letters of administration on the estate, and in that way have the effects found within her territory administered; but she cannot, by proceedings in her own courts, reach the assets in this state or establish claims against the estate that will be here enforced. The debts against the estate are to be adjusted, and the effects belonging to it distributed according to our own laws.

"But it is insisted, that the plaintiffs in error, by entering their appearance to the action in Ohio, submitted themselves to the jurisdiction of the court, and cannot now question its authority to pronounce judgment. This position would be correct, if the proceedings there had been against them personally; but as respects them in their representative capacity, we think the effect is otherwise. The grant of administration in this state gave them no control over the estate in Ohio. It did not confer on them any authority to appear and defend the action---any power to go into another jurisdiction, and there permit claims to be adjudicated against the estate. Their authority is limited, and when they exceed it, their acts will not bind the estate. The appearance being wholly unauthorized by our laws, the judgment that resulted from it is not binding on the estate. If binding here, for any purpose, it is against the plaintiffs in error, personally. If the judgment had been obtained against an administrator, duly appointed in Ohio, the record would not be evidence of indebtedness, in an action against the administrators, in this state. 'Where administrations are granted to different persons in different states, they are so far regarded as independent of each other, that a judgment obtained against one will furnish no right of action against the other, to affect assets received by the latter, in virtue of his own administration; for, in contemplation of law, there is no privity between him and the other administrator.' 1 Story's Conflict of Laws, sec. 522.

"We are of the opinion that the judgment, if the allegations of the plea are true, cannot be here enforced against the estate. It is not such an adjudication as will bind the estate. The demand against the intestate has not been adjusted in pursuance of our laws, but in defiance of them. If the creditor wishes to secure any share of the assets in this state, he must sue on his original cause of action."

And the court then raises the quære as to whether the administrator could be personally sued in such a case. The position of the case last referred to in the 11th Illinois, is confirmed by the case of *Reutschler* v. *Jamieson*, 6 Mo. App., 137. The language of the decision last mentioned is as follows:

"The administrator could not, by any action on his part, permit a claim against the estate of his intestate in Missouri, to be adjudicated upon by a court in Illinois, and a judgment obtained in Illinois, after the death of Garhardt against his administrator appointed

in Missouri, could be no evidence of indebtedness in an action and against an estate here.

"*The courts of another state cannot enforce claims against the estates in Missouri of deceased persons, nor can the administrator here go into another and foreign jurisdiction and there permit claims to be adjudicated against an estate.*"

b.

The decisions in *Judy* v. *Kelley*, 11th Ill., 211, and in the case in the 6th Mo. Appellate Court Reports, last cited, clearly establish that a suit against an administrator in a state other than that of his appointment cannot be maintained, and that if judgment be rendered in such suit against such an administrator in such suit, it is no merger of the cause of action as to an administration in the state in which such administrator is appointed and that an action will not lie upon the judgment against said administrator in the state of his appointment, but that the suit if maintained in said last named state, against such administrator must be not upon the judgment, but the original cause of action. The reason for this holding is that an administrator's authority is limited to the state of his appointment and he cannot as such be sued in another state than that in which he was appointed nor can he, unless permitted by the law of such other state, in other words, unless by comity, bring any suit therein.

If in any state *not permitting a foreign administrator to sue* in its limits, we find that such suit has been brought, and a judgment rendered, and it has been held that the debt is not merged in said judgment, such decision is in the line of *Judy* v. *Kelley*, 11th Ill., 211, above mentioned and is in support thereof.

We find such decision in *Pond, Jr., Admnr.* v. *Makepeace*, 2 Metc., 114. The court there held that judgment recovered in Massachusetts, by default in a suit by an administrator of another state, on a demand due the decedent from a citizen of Massachusetts, was no merger of the cause of action and was no bar to a suit on the same demand by an administrator of the same decedent, duly appointed in Massachusetts, although execution on the first judgment was levied on the debtor's real estate and returned satisfied.

Goodwin v. *Jones*, 3 Mass., 514, to same effect.

In a late case entitled *McGarvey* v. *Darnell*, and which is found

reported in the 25th Northeastern Reporter, page 1,005, and which has not yet gotten into the reports, the Supreme court of Illinois pronounce against the judgment of the Probate court in Iowa being a lien against decedent's land in Illinois, the judgment not having been allowed as a claim against decedent's estate in any Probate court in Illinois. In the case last cited, certain heirs of the decedent brought a bill for partition, and one of the defendants sought in the proceedings in partition to make the judgment in the Iowa Probate court a lien upon the interests of the decedent in said Illinois lands, but the Supreme court, as we have stated, denied that said judgment of said Iowa Probate court constituted any lien upon the lands of Illinois in the case last cited. No claim had been filed against the administration in Illinois, although the administration has been taken out in Sangamon county, Illinois. Upon the trial, the only evidence presented by the claimant was the judgment in the Iowa Probate court, but the Supreme court of Illinois say: "That said judgment "was no proof of the debt against the administration in Illinois and "was not competent to show even *prima facie* the validity of the "claim."

"It is urged," say the Supreme court of Illinois in the case last cited, "that the Iowa judgment had the same effect that an allowance in the County or Probate court would have had to prove *prima facie* as against the heirs, the validity of the demand of appellant against the estate of the intestate in this state. There are several reasons why this contention is not well founded. * * * Moreover, that in regard to which the Iowa courts had jurisdiction to adjudicate, was the property in that state and that only, and when they assume to adjudicate that the demand of appellant was a just charge upon the estate of deceased, such adjudication had reference solely to the property in that state and was efficacious in respect to that property only. Besides this, it must be admitted that the allowance of the claim by that court as against the administrator should derive this authority from a court of that state having probate jurisdiction, did not establish even *prima facie* the validity of such claim as against the administrator who would derive his authority from the County court of this state and who was appointed to administer upon property of the intestate which was located in this state, and it would be anomalous and unreasonable to hold that the court of another state could render a judgment which, while it was ineffectual to charge personal property of the intestate in this state, would be effective to impose a burden upon real property located here."

c.

From the allegations of the bill, we would infer that the probability was that our opponents would make some objection to the position contended for by us, based upon the fact that the administrator in Illinois was discharged pending litigation in the State of Arkansas, but it will be noticed upon a close observance of dates, that the decree of the Circuit court of the United States for the Eastern district of Arkansas was rendered on the 25th day of July, 1882, and the final discharge of appellant in Illinois was not until the 24th day of January, 1884.

While we do not deem it necessary under the questions certified, to discuss at any length, this phase of the case, nevertheless there is one case so nearly in point that we cannot help citing from it. The case is the case of *Low* v. *Bartlett*, 8 Allen, 259. The facts upon which the decision in the case last referred to was rendered, are substantially these:

A bill in equity was brought on the 14th day of September, 1863, in Massachusetts, seeking to establish and enforce against the estate or legatees of Benjamin B. Mussey, late of Boston, deceased, in Massachusetts, a judgment recovered by the plaintiff in Vermont where ancillary administration upon Mussey's estate had been taken out. Mr. Bartlett was executor in Massachusetts.

The bill set forth that commissioners were appointed in Vermont, under the administration there taken out to receive and adjust claims of creditors who resided there, and that the plaintiff presented his said claims which were rejected by them; that he appealed from their decision, and in the Supreme court of that state recovered judgment for the sum of $5,839. The bill further stated:

"That this judgment was by the law of Vermont a merger of his original debt, and an extinguishment of the same; that the suit was defended at the request of Mr. Bartlett; that it was continued in court for a long time; that when judgment was obtained, Mr. Bartlett had settled the estate in Massachusetts, but that the trustees held funds which ought to be applied to the payment of debts; that the estate in Vermont was insufficient to pay the debts there, and the plaintiff received only 39 and 1/10% of the amount of his judgment; that he has presented his claim for the balance to said Bartlett who refuses to pay the same, and he finds that the time for presenting

claims against the estate and bringing suits against the executor has expired; and that he had supposed the estate here would be kept open, and also that the estate in Vermont would be sufficient to pay his debt. He therefore seeks to recover the balance of his debt by this suit in equity out of the funds in the hands of the trustees, notwithstanding the statute of limitations by which his right of action against an executor is limited to two years."

The court then proceeded to say:

"His position is, that, as his original claim was merged in the judgment obtained in Vermont against the administrator there, the present claim is a new one which has arisen since the decease of the testator; and that there is such a privity between the executor here and the administrator there, that his judgment can be enforced here in equity. Since it is conceded that without that judgment the claim would be barred here by the statute which limits actions against executors to two years, the first question to be considered is, whether the judgment has any validity against the executor.

"If we look at the question of privity between the executors here and the ancillary administrator in Vermont, it is difficult to find any valid ground on which such privity can rest. The executor derives his authority from the letters testamentary issued by the Probate court here; he gives bond to that court; is accountable to it for all his proceedings; makes his final settlement in it, and is discharged by it, in conformity with the statutes of this commonwealth. The administrator derives his authority from the Probate court in Vermont, and is accountable to it in the same manner in which the executor is accountable to our court. The authority of the executor does not extend to the property there, nor to the doings of the administrator. Nor does the authority of the administrator extend to the property here, or to the doings of the executor. When the plaintiff commenced his suit against the administrator, the executor had no right to go there and defend it. If he had been found in Vermont, he could not have been sued there. The judgment rendered in the suit was not against him, or against the testator's goods in his hands; but was simply against the administrator, and the testator's goods in his hands. The courts of Vermont had no jurisdiction of the executor or of the goods in his hands, any more than our courts would have over the administrator and the goods in his hands. It is this limitation of state jurisdiction that creates a necessity for an administrator in every state where a deceased person leaves property; *and each state regulates for itself exclusively the manner in which the estate found within its limits shall be settled.* If after the payment of debts and expenses in Vermont there had been a surplus remaining in the hands of the administrator, the Probate court of that state would have ordered him to pay it over to the executor; and the only way in which the executor and administrator could have any dealings with each other would be under such an

order. It is in effect the only way in which they could know each other officially. As there was, in fact, no surplus, they have nothing to do with each other. They have, therefore, not one of the direct relations to each other which enter into the idea of privity. * * *

"Nor is there any need of such a doctrine of privity as the plaintiff contends for. The plaintiff might have prosecuted his original claim here, at the same time that he was prosecuting it in Vermont; so that he was under no necessity to wait till it was barred by onr statute of limitations relating to suits against executors and administrators. There would, therefore, be no equity in setting aside thef statute of limitations in his favor, even if we had power to do so. On the other hand, it would be very inequitable to permit him to prosecute his suit in another jurisdiction, where the executor could not defend against it, and then, after the estate in Massachusetts had been settled, and the time of limitation had expired, revive the liability of the executor because of the foreign judgment thus obtained. Statutes of limitations bind courts of equity as well as courts of law; and in this case the executor not only has a right to its protection, but is bound to avail himself of it. * * *

Another point taken in behalf of the plaintiff is, that his claim is not really against the executor, but against the legatees and their trustees, on the ground that the trustees have received from the executor the assets of the estate, to hold for the legatees; that he has a judgment against the estate which was rendered in a neighboring state since the expiration of the statute time for presenting claims here, and which, therefore, could not be presented before; and that it thus comes within the provisions of Gen. Sts. c. 101, Sec. 31.

It is true that, in the present form of a judgment against the administrator in Vermont, it could not have been presented before. But that circumstance is not material, since it appears that, if it had been rendered and presented at an earlier date, it would not have been valid against the executor. An action against him must still have been upon the original claim. As to him, therefore, the doctrine of merger does not apply."

The result of the discussion under this branch of argument we think is sufficient to show that the decree of the Circuit court of the United States for the Eastern district of Arkansas, of July 25, 1882, above referred to was not evidence of any indebtedness against appellant as an Illinois administrator administering an estate before the Probate court of Lake county, Illinois, and that notwithstanding their decree, had appellees proceeded against appellant as said administrator in any court of Illinois, suit against him must have been *not upon their decree*, but on the original cause of action itself.

SUBDIVISION 4.

The object of our argument under this subdivision is to determine the proper answer to be made to the seventh of the questions mentioned in the certificate of division in this case, namely:

"Whether it was competent for the administrator of David Ballentine, appointed under the laws of Illinois, to appear in the suit brought in the Circuit court of the United States for the Eastern district of Arkansas by the plaintiffs herein, and submit himself to the jurisdiction of that court in respect to the matters involved in that suit."

The authorities are so absolutely uniform upon this point that we think we may state our position in unqualified terms in this wise, viz: that it was not competent for the appellant, administrator of David Ballentine, appointed under the laws of Illinois, to appear in the Circuit court of the United States last mentioned, and submit himself to the jurisdiction of that court in respect to the matters involved in that suit.

Judy v. *Kelley*, 11 Ill., 211,

is an Illinois decision expressly in point.

The true rule is that administrators are not subject to an action or suit against them in their fiduciary capacity in the courts of a state other than that wherein their authority is granted to them.

Judy v. *Kelley*, 11 Ill., 211.
Durrie v. *Blowvelt, Admr.*, 49 N. J. Law, 114.
Caldwell v. *Harding*, 5 Blatch., 501.
Vaughan v. *Northrup*, 15 Peters, 1.
Mellis v. *Dixon*, 1 Cliff., 125.
Sloan et al. v. *Sloan et al.*, 21 Fla., 569.
Rorer on Inter State Law, pp. 27 and 207.
Bealer v. *Dunn*, 3 Head. Tenn., 87.
Vermilya v. *Beattie*, 6 Barb., 429,

and other authorities cited under Subdivision B, in argument.

In *Vaughan* v. *Northrup*, 13 Peters, 3, it is said as follows:

"Under these circumstances, the question is broadly presented whether an administrator appointed and deriving his authority from another state, is liable to be sued here in his official character for

assets lawfully received by him under and in virtue of his original letters of administration. We are of opinion upon principle and authority that he is not. Every grant of administration is strictly confined in its authority and operation to the limits of the territory of the government which grants it, and does not *de jure* extend to other countries. It cannot confer, as a matter of right, any authority to collect assets of the deceased in any other state, and whatever operation is allowed to it beyond the original territory of the grant is a mere matter of comity, which every nation is at liberty to yield or to withhold, according to its own policy and pleasure with reference to its own institutions and the interests of its own citizens. On the other hand, the administrator is exclusively bound to account for all the assets which he receives under and in virtue of his administration, to the proper tribunals of the government from which he derives his authority, and the tribunals of other states have no right to interfere with or to control the application of those assets according to *lex loci*, hence, it has become an established doctrine that an administrator appointed in one state cannot, in his official capacity. sue for any debts due to his intestate, in the courts of another stato, and that he is not liable to be sued in that capacity in the courts es the latter by any creditor for any debts due there by his intestatd The authorities to this effect are numerous, both in England ane America, but it seems to be unnecessary in the present state of tzt. law, to do more than to refer to the leading principle as recognixe. by this court in *Fenwick* v. *Sears*, 1 Cranch., 259; *Dixon's* dhar, v. *Ramsey's Exrs.*, 3 Cranch., 319, and *Kerr* v. *Moon*, 9 he*E*e, 565."

In the case ot *Judy* v. *Kelley*, 11th Ill., 211, from which we have above quoted at length, we have the decision of the Illinois Supreme court upon the question of the power of an administrator appointed under the laws of Illinois, where it is expressly held that an Illinois administrator has no power to appear in a foreign jurisdiction and defend a suit there pending against him.

This decision of the Supreme court of Illinois upon the power of an Illinois administrator ought to be deemed and taken to be controlling in the case, but the authorities are so concurrent upon this point that we forbear making further citations.

2.

The foregoing authorities establish beyond question that an administrator has no power to appear and defend a suit in another jurisdiction and that if he does so, the judgment is not binding as a judgment against assets being administered in the jurisdiction where

said administrator is appointed (as in this case, in Illinois). But a further question is likely to arise, we apprehend, in argument, and that is, supposing such administrator to have appeared in a foreign jurisdiction, and to have defended a suit against himself as such administrator there, and the judgment to have been rendered against him in such suit, is such judgment binding against an administration by him in another state, or in other words, in the language of the 6th point in the certificate:

"Is the decree of July 25, 1882, recited in the bill, void, because rendered against an administrator appointed in Illinois, voluntarily appearing therein and submitting himself to the jurisdiction of the court rendering the decree?"

The decision of *Judy* v. *Kelley*, 11th Ill., 211, holds that an administrator's authority is limited to the state in which he is appointed and in the matter of defending suits to the defending of suits brought in such state; that he has no power to go outside of the state of his appointment and defend suits there brought. We would assume that the decision of the Supreme court of Illinois upon the powers of its own administrators in this regard would be final and conclusive. An administrator whose authority is limited in the matter of acting, to the state of his appointment (in this case to Illinois), would, it seems to us, when found defending suits in other States, stand very much in the attitude of a corporation chartered under the laws of Illinois with a clause in the act of its incorporation limiting its authority to do business to the state of its incorporation, and forbidding it to do business or be sued elsewhere than in the state of its incorporation? Would it be contended that a judgment rendered in another state against a corporation whose charter contained the limitations just mentioned, could be sued in another state in defiance of the provisions of its charter and a judgment be rendered against it in such other state; and if such judgment were rendered against any such corporation in another state than that of its creation, would such judgment be otherwise than void? *Bank of Augusta* v. *Earle*, 13 Peters, 519, is authority, we think, for saying that such judgment would be void.

The limitation of the power of such corporation in the one case and of an administrator in the other with reference to confining each within the sovereignty of the state of their creation is the result of

provisions of the charter in the one case, and in the other of the law and decisions of the state in which such administrator is appointed. In the one case, the limitation is the result of a positive provision of the charter, in the other of positive decisions of the Supreme court applied to the law authorizing his appointment. But the result, it seems to us, should be the same in the one case as in the other, when the question relates to the validity of the judgment rendered in some sister state. The case of *Judy* v. *Kelley*, holds in the most positive terms that such judgment of a sister state is void when the question is as to assets in Illinois. The same view is entertained by the Appellate court of Missouri in *Reutschler* v. *Jamieson*, 6th Mo. App., 137, above cited. In *Sloan et al., appellants*, v. *Sloan et al., appellees*, 21 Fla., p. 589, the syllabus is as follows:

"The statutes of Florida do not clothe a foreign executor with "authority to defend a suit in her courts, nor can such authority be "given by consent of parties that he shall become a party defen- "dant to a suit pending and an order therein making such a "party."

The court in its opinion stating as follows:

"We meet at the threshold, upon reading the record, the fact that there is a want of necessary parties. Neither the common law the law of nations, nor the statutes of this state, permit a suit to be maintained in our courts against an executor or administrator who has obtained his letters testamentary or of administration from the courts of another state, or in the language of Judge Forward in *Gordon* v. *Simonton*, 10th Fla., 196. 'In the absence of any statute, the well settled rule is that a party cannot sue or defend in our courts, as executor or administrator under the authority of a foreign court of probate, for the reason that our courts will not recognize a personal representative of the deceased in his representative character unless clothed with authority derived from our laws. The statute of our state does close foreign executors and administrators with authority to bring a suit, but it does not authorize them to defend suits' and later on the same court says: 'It would be idle to argue that consent can give the right or power.'"

The case in which the decision last cited was rendered was upon a bill to remove a cloud against the title to real estate, but the the Supreme court itself raised the question of want of parties, and held that by reason of the fact that a foreign executor has on standing to defend a suit in its courts, that the court had not parties

before it against whom it could render a binding decree. This is at least an indirect way of deciding that a court of one state can have no jurisdiction where a suit is defended by an administrator of another state.

We are dealing, as we have stated, with the question as to whether the decree of July 25, 1882, above mentioned, is void. Of course the question is to be considered in connection with the facts of the case, which are: Is it void so far as binding, of its own force and as a judgment, assets being administered in Illinois by an administrator of the estate appointed in Illinois? If such judgment would be no evidence of a debt as against the administrator in Illinois, when sued upon in one of the local courts in Illinois, it of course follows that as a judgment in Illinois, before a court in Illinois, the decree of July 25, 1882, would be void.

From two classes of reasoning which have been pursued in the foregoing argument, it must follow that the decree of July 25th is void, and we summarize the two, thus: First, said decree is no evidence as against the administration in Illinois, of any indebtedness in favor of appellees and against the estate of David Ballentine being there administered.

Second. Said decree of July 25, 1882, is void, for the reason that the administrator appointed by the proper court in Illinois has no power or authority to appear and defend a suit against him as administrator under his Illinois appointment in a foreign jurisdiction, and because the courts of such foreign jurisdiction cannot render a decree against such Illinois administrator for want of his power as administrator to appear and defend an action in such foreign jurisdiction. In *Reynolds* v. *Stockton*, 140 U. S., 268, the following quotation from the Supreme court of New Jersey, is approvingly made:

"Jurisdiction may be defined to be the right to adjudicate concerning the subject-matter in the given case. To constitute this there are three essentials.

First. The court must have cognizance of the class of cases to which the one to be adjudged belongs.

Second. The proper parties must be present, and

Third. The point decided must be in substance and effect within the issues."

It follows that if the court must have cognizance of the class of

cases to which the one to be adjudged belongs, there was a total failure of jurisdiction in reference to the decree of July 25, 1888, because there was no administrator defendant before the court, over which the court could assume jurisdiction. In other words, in the line of this class of authorities, the Circuit court of the United States for the Eastern district of Arkansas had no cognizance of the class of cases against administrators appointed in other states sued within the jurisdiction of Arkansas.

In urging as we do, under this subdivision of our case, that the question of the authority of the Illinois administrator with reference to appearing and defending assets in other jurisdictions, should be determined by the decisions of the courts of Illinois, or by the decisions of *Judy* v. *Kelley*, 11th Ill., 211, we are only asking that the same faith and credit be given in Illinois to the decree of July 25, 1882, as the same decree would have from the same standpoint in the courts of Arkansas. What we mean is this: that if the question was raised in the suit in Arkansas, of the power of a foreign administrator to appear and defend suits in Arkansas, the Supreme court of Arkansas would say, as it has said, that the question of the power of such administrator must be determined by the law of the state of his appointment.

Newton Exr. v. *Cooke Exr.*, 10 Ark., 119.

If such would be the standing before an Arkansas court, of the decree of July 25, 1882, on the question of the power of a foreign administrator to appear there and defend suits, when the same decree is transferred to the courts in Illinois, and the question is there raised of the binding force of the said decree over an Illinois administrator who has appeared and defended a suit in the courts of Arkansas, it would follow that such question should be settled by the Illinois decisions upon the point. In other words, the question of the jurisdiction of the Arkansas court over the Illinois administrator should be determined in the Illinois suit by a decision of the Supreme court of Illinois, or in other words, by the decision of *Judy* v. *Kelley* 11th Ill., 211, and if left to such decision, the decree of July 25, 1882, was void.

SUBDIVISION 5.

The point which we are now about to make is of importance in connection with the seventh of the questions of division certified below, and perhaps has little relation to other points of division in the case. Our position is this: that the decree of July 25, 1882, above referred to, is a fit subject of judicial construction, and when so construed, the said decree would be construed by any court before which the same came for construction as applying only to assets of the intestate, David Ballentine, within the territorial limits of Arkansas; that judicial construction could not extend the terms of said decree to property within the State of Illinois being there administered before one of the Probate courts of Illinois; that the reasonableness of this construction is made to appear from the difficulty which environs the decree, and the difficult questions in law which arise, if it be given any broader construction than as applying to assets of David Ballentine within the territorial limits of Arkansas. We cite one case where we think a similar decree has been so understood by the courts of the state before which it came for consideration, namely: *Jones* v. *Geroch*, 6 Jones Eq. (N. Ca.), Rep., 190, and we cite another case where we think a like construction was given to the judgment of a sister state against an administrator where the judgment was payable *de bonis testatoriis.*

Rosenthal Ad. v. *Renick*, 44 Ill., 206.

Construed in this wise, the decree of July 25, 1882, did not of course bind assets being administered by appellant in Illinois, and the answer to the seventh of the questions upon this view of the case, is an easy one.

SUBDIVISION 6.

The fact that the appellant filed a bill of review on the third of November, 1884, in the said Circuit court of the United States for the Eastern district of Arkansas in review of the decree of July 25, 1882, and that said bill was on or about April 16, 1888, dismissed for want of equity by said Circuit court of the United States, can add nothing to the force and effect of the decree of July 25, 1882, whatever. The bill of review merely sought to review and reverse

the decree of July 25, 1882, and from the nature of such bill, could not add anything to or detract anything from the decree sought to be reviewed; and so the question of the binding effect of the proceedings in Arkansas upon assets in Illinois, is left to rest upon the terms of the decree of July 25, 1882, and the terms of this decree become no broader from the fact that the same court rendering the same, dismissed a bill of review thereof nearly six years subsequent to its rendition.

The effect of the filing of the bill of review would in no manner delay execution of the decree of July 25, 1882, therein complained of. 2 Daniels Chancery Practice, *p. 1582. And secondly, the decree itself could have been sued upon in Illinois at any time prior to the final discharge of the appellant as administrator of the County court of Lake county, Illinois, on January 24, 1884, if the appellees had only seen fit to do so.

It is said in 2 Daniels' Chancery Practice, *p. 1575, that the objects of a bill of review and of a bill in the nature of a bill of review, is to procure the reversal, alteration or explanation of a decree made in the former suit. This being the nature and object of a bill of review, no further citation is necessary, it seems to us, to show that the questions to be decided at this time are in no manner affected by the fact that subsequent to the rendition of the decree of July 25, 1882, the appellant filed a bill in review thereof, and that a decree was rendered dismissing the same, but that all the questions arise upon the decree of July 25, 1882, itself.

SUBDIVISION 7.

The Circuit court of the United States for the Northern division of Illinois rendered a judgment against the defendant, Edward F. Lawrence, individually, in favor of each of the appellees for $3,136.67 and costs of suit. The seventh of the points certified raises the question as to whether the decree of July 25, 1882, bound the defendant as administrator of Ballentine, deceased, and the assets of the estate of the decedent in Illinois in his hands, in the sense that the defendant was bound to pay the decree without further action against him or said estate by the complainants, and whether, having settled the estate in Illinois, under the order of the County court of

Lake county, Illinois, and obtained his discharge as such administrator from said County court without having paid the decree, the appellant was liable in the action being there prosecuted against him.

The question of the individual responsibility of the appellant arises in and under the seventh point certified, and the theory on which appellees contend that there was an individual liability incurred by appellant, must be deduced from the prayer of the bill filed in the Circuit court of the United States for the Northern district of Illinois aforesaid. The bill prays (Rec., 12, 13) that the settlement of the estate of Ballentine, deceased, in the Lake county court and the discharge by said court of the appellant as administrator, might be treated as a nullity against complainants, and for an accounting, and that if appellant had assets of the estate of David Ballentine in his hands sufficient to pay the decree of July 25, 1882, and costs, which, since he received notice of the suit by complainants in said Circuit court for the Eastern district of Arkansas, he, the appellant, has paid out or distributed among the heirs or distributees of David Ballentine, deceased, or has otherwise applied said assets to the prejudice of your orators, then that Lawrence, appellant, may be adjudged guilty of a *devastavit* and be decreed to pay complainant *de bonis propriis*, the sums mentioned in the decree of July 25, 1882; in other words, the basis for the rendition of a personal decree against appellant, if any exists, in the case, must be found in the fact that the appellant had been guilty of certain acts amounting to a *devastavit*. Now, then, was appellant guilty of a *devastavit?* If the decree of July 25, 1882, was in no manner binding upon the assets of the estate of David Ballentine, deceased, being administered by appellant in the County court of Lake county, Illinois—if the appellant, as administrator in Illinois, was bound to pay only such claims as had been proved up and allowed against the estate of David Ballentine, deceased, in and by the County court of Lake county, Illinois, and was subject in all things in the matter of said administration to the order of said County court of Lake county, Illinois, then it is clear upon the foregoing authorities that appellant appropriated the assets being administered by him in Illinois in the only manner that he legally could do so, namely, under the direction of said County court—and that, having done so, there is no foundation for any charge of misappropriation

of assets by him, and without some misappropriation of assets being administered by him in Illinois, he was or could be in no manner guilty of a *devastavit;* hence, there can be no foundation for a personal decree or judgment against appellant in this case, and the decree of the Circuit court of the United States for the Northern district of Illinois, was clearly wrong.

But we assert that under the laws of Illinois, a *devastavit* cannot be urged by a creditor as existing until such creditor has obtained an order of the County court for the payment of his claim at the hands of the administrator and a demand has been made under such order upon said administrator for the payment of said money, and thirty days since such demand made have elapsed. So far as the creditor seeking payment of his claim is concerned, the law of Illinois has undergone a change upon the subject of a *devastavit.*

We call attention to the 115th section of the statutes of Illinois, entitled Administration, found on page 244, Vol. 1 of Starr & Curtis, which we understand to have changed the law with reference to *devastavit* and to require an order of the County court of the proper county of Illinois, placing the administrator in default in the payment of some claim before he can be charged with or held guilty of having committed a *devastavit.* That section provides that if any administrator fails to pay over any moneys or dividend to any persons entitled thereto in pursuance of the order of the County court lawfully made within thirty (30) days after demand made for such moneys or dividend, the court may attach the executor, and his refusal shall be deemed and taken in law to amount to a *devastavit,* and an action upon his bond may be forthwith instituted and maintained. Now a creditor (in this case the appellees) could show no judgment requiring the order of the County court of Lake county, Illinois, to pay the decree of July 25th, 1882, and, hence, have not shown the *devastavit* in the only proper way that a *devastavit* can be established by a creditor complaining that he has not received his share of the assets of an estate undergoing administration in one of the courts of Illinois, hence, the appellant has not been shown guilty of any *devastavit*; and, hence, the groundwork for a personal judgment against him does not exist and the personal decree ren-

dered by the Circuit court of the United States for the Northern District of Illinois, is not sustainable.

The laws and the decisions of the highest courts of Arkansas determine that a *devastavit* can only be established in Arkansas by such an order of the county court as we are now referring to and speaking of,

Tate v. *Horton*, 4 Otto, 746,
Outlaw v. *Yell*, 5 Ark., 473,
Brinkley v. *Willis*, 22 Ark., 6,

and such being the case, we urge that the appellees are not in position to charge a *devastavit* without first producing an order of the County court of Lake county, Illinois, requiring the payment of their judgment or decree of July 25, 1882; that if the case were otherwise, the decree of July 25, 1882, would carry with it into Illinois a greater force and credit than the same decree would have in Arkansas, and this under the clause of the constitution so frequently referred to, is never allowed to the decree or judgment of a sister state on a foreign jurisdiction.

Conclusion.

The questions certified are to be interpreted in the light of the facts set out in the bill of complaint in the case at bar, which facts are admitted by the demurrer and the defendant abiding his demurrer. They are also to be interpreted in the light of the fact that the assets being administered and to be affected by the decree of July 25, 1882, if at all, were in charge of the appellant who as an administrator, exercised his appointment under the authority of the county court of Lake county, Illinois, the said assets having their *situs* in Illinois. If the position for which we have contended is tenable, then it follows that the different points certified should be answered as follows, namely:

The proper answer to the first point certified is that it was not competent for the administrator of David Ballentine, acting under the laws of Illinois, to appear in the suit in which the decree of July 25, 1882, spoken of, was rendered, and submit himself to the juris-

diction of the Circuit court of the United States for the Eastern district of Arkansas, which rendered that decree; that said incompetency resulted from the decisions of of the courts generally, and from the local nature of the office of an administrator and from the decisions of the Supreme court of Illinois upon the express question of the authority of an Illinois administrator. We refer here to *Judy* v. *Kelley*, 11th Ill., above mentioned.

The second of the questions certified should be answered, that the binding force of the decree of July 25, 1882, was less by reason of the fact that the defendant in the suit in which said decree was rendered, was an administrator of the deceased under appointment of an Illinois County court and not under any appointment by the court or tribunals of Arkansas.

The third point certified should be answered that the decree of July 25, 1882, was open to attack in the Circuit court of the United States, sitting in Illinois, for the reason that the defendant in said suit in said Circuit court of the United States for the Eastern district of Arkansas, held his office of administrator under the authority alone of the laws of Illinois.

The fourth of the points certified should be answered, that the decree in the Circuit court of the United States for the Eastern district of Arkansas, rendered July 25, 1882, was not conclusive upon the appellant upon the issue as to whether the estate of plaintiff is indebted to appellees and as to the amount of such indebtedness and that such decree of July 25, 1882, was as against the appellant's administration in Illinois and as against appellant as an administrator in Illinois, no evidence of any indebtedness whatever.

The fifth point certified should be answered in the negative.

The sixth point certified should be answered in this wise, namely: that the decree of July 25, 1882, recited in the bill of the appellees, is void because rendered against an administrator appointed in Illinois.

The seventh of the points certified should be answered in this wise, namely: that the decree of the Circuit court of the United States for the Eastern district of Arkansas rendered July 25, 1882, did not bind the defendant as administrator of David Ballentine, deceased, appointed under the laws of Illinois and the assets of the

estate of said decedent in his hands as administrator, in the sense that the appellant was bound to pay said decree without further action against him, or the said estate, by the appellees; and that appellant, having settled said estate, under the order of the County court of Lake county, Illinois, and obtained his discharge as such administrator from said County court without having paid said decree, is not liable in this action.

The eighth of the points certified should be answered in effect, that the decree of April 16, 1888, dismissing the bill of review in complainant's bill mentioned, did not affect the decree of July 25, 1882, in anywise; and secondly, that the decree of July 25, 1882, did not become binding by reason of the rendition of the decree of dismissal of appellant's bill of review filed in the Circuit court of the United States for the Eastern district of Arkansas, in the sense that the appellant was bound to pay said decree without further action against him or the estate of said decedent in his hands in Illinois by the appellees.

The proper answer to the respective questions certified will require the reversal of the decree of the Circuit court of the United States for the Northern district of Illinois, appealed from in this case.

HENRY A. GARDNER,
WM. MCFADON,
Solicitors and Attorneys for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1901.

NO., 1067.

EDWARD F. LAWRENCE, AS ADMINISTRATOR OF DAVID BALLENTINE, DECEASED, AND IN HIS OWN RIGHT,
Appellant,
vs.
WILLIAM H. NELSON AND GEORGE M. FRENCH,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

REPLY BRIEF OF APPELLANT.

HENRY A. GARDNER,
WM. MCFADON,
SOLICITORS AND ATTORNEYS FOR APPELLANT.

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HENRY A. GARDNER,
WM. MCFADON,
Solicitors and Attorneys for Appellant.

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Appellant,
vs.
WILLIAM H. NELSON AND GEORGE M. FRENCH,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

REPLY BRIEF OF COMPLAINANT.

I.

The argument of appellees furnished us is directed largely to showing that the Circuit court of the United States in Arkansas, rendering the decree in favor of appellees, had jurisdiction of the person and subject-matter to render such decree binding. Their argument does not seem to us to meet our position; that even supposing the jurisdiction of the Circuit court of the United States, sitting in Arkansas, to have attached to the fullest extent, that nevertheless such judgment did not execute itself, and had no force or binding effect outside of the

territorial limits of the State of Arkansas, and within the territorial limits of Illinois. To have made their decree valid and available within the State of Illinois, a suit must have been instituted upon such judgment in some one of the courts of proper jurisdiction within the territorial limits of Illinois.

Two courses upon the authorities were open to appellees, if they had desired to make their decree binding and of force against the estate of Ballentine being administered by appellant in Illinois:

First. Appellee might have proceeded to sue appellant, as administrator of the estate of David Ballentine, deceased, upon their judgment or decree of the said Arkansas court in any court of general jurisdiction within the territorial limits of the State of Illinois, and this would have included either the proper Circuit court of the State of Illinois or the proper Circuit court of the United States, sitting in Illinois.

This course would have fully satisfied the decision in *Darling* v. *MacDonald*, 101 Ill., 370, but we still think that even then, having obtained the judgment in any such court of general jurisdiction in Illinois, the appellees must have exhibited their decree as a claim against the estate of Ballentine in the Probate court of Lake county, Illinois, as a condition precedent to participating in the administration of the assets there going on. Upon such claim being made, the mere exhibiting of the certified copy of such judgment so obtained would have, under the probate laws of Illinois, sufficiently established such claim to have entitled appellees to an allowance thereof in the Probate court of Lake county, and upon such allowance, appellees would have been entitled to a participation in the assets

there being administered, and a dividend therefrom from time to time as declared by said Probate court; or

Secondly. Appellees might have filed their claim against the estate of David Ballentine, deceased, in said Lake county, based upon their Arkansas decree, and obtained an adjudication of said court thereon as to its being or not being a valid claim against the said estate, and in case of an adverse decision by said Probate court upon their said claim, they could have prosecuted an appeal to the upper courts of said state.

But in the case at bar, appellees did neither of these things, and yet appellees expect their decree obtained in Arkansas to be self-executing in Illinois—a thing impossible under the authorities.

The opinion of Mr. Justice Brewer holding court in Arkansas, rendered when deciding that a bill of review of the original Arkansas decree should be dismissed, is cited,

But when Mr. Justice Brewer rendered said decision, the question of the extra territorial force of that decree was not the question under consideration.

The question now arises upon that decree, did it of its own force and without any suit thereon in any court of Illinois, have effect in Illinois? Was it in other words self-executing in Illinois? As deciding this question we have cited and again cite the opinion of Mr. Justice Brewer, in *Reynolds* v. *Stockton*, 140 U. S., 255. The last case holds against the extra territorial force of the Arkansas decree.

The case of *Union Bank* v. *Jolly*, 18 How., 503, cited by appellees shows that the complainants had obtained a judgment against an administrator in the United States court, sitting in Mississippi, and then filed a bill in the same court to enforce it.

Had appellees obtained a judgment in the United States court, sitting in Illinois, upon their Arkansas decree, against appellant as David Bailentine's administrator, and then filed a bill in the same United States court to enforce payment of that judgment, the case would have been somewhat parallel, but as far as the case at bar is concerned, the central step—that of having obtained a judgment in Illinois on their Arkansas decree—is wanting.

The case of *Payne* v. *Hook*, 7 Wallace, 431, is fully distinguished so far as this case is concerned in the latter case of *Youley* v. *Lavender*, 21 Wall., 276.

The case of *Green* v. *Creighton*, 23 Howard, 106, cited by appellee, merely decides that a foreign creditor may establish his debt in the United States courts, and holds nothing further.

Notwithstanding the argument of appellee, the position taken by us that the decrees of an Arkansas court has no extra territorial force remains unanswered.

II.

The appellee asserts that the statutes of limitation of Illinois as to filing claims within a certain time, does not bind a non-resident creditor.

It ought to be a sufficient answer to this position to cite *Morgan* v. *Hamlet*, 113 U. S., 449, in which this court decided that the Arkansas statute of limitations, providing that all demands not exhibited to the executor or administrator within two years from granting letters should be barred, governed in the allowance of claims.

This court, in the concluding portion of its decision in the case last cited, say:

"Whatever its description" referring to the claim sued on "it was a claim against the estate of John G. "Morgan, and for which his personal representative was "in the first instance liable, and the statute is a bar to "every such claim unless presented within the time pre- "scribed." "On this ground the decree of the Circuit "court is affirmed."

See also *Public Works* v. *Columbia*, 17 Wall., 521.

Suppose the appellees instead of suing in equity as in the case at bar, and for such grounds as stated in their bill had instituted a suit in debt upon their Arkansas decree in some court in Illinois, against appellant as administrator of Ballentine, deceased, two defenses could have been made by appellant in the suit. *Firstly*. That appellant had ended his administration and been discharged by the court, appointing him; and, *secondly*, the court rendering the decree in Arkansas had no jurisdiction. Had these defenses been held bad, the Illinois court rendering judgment on such decree must, on the authorities just cited, have regard to the administration laws of Illinois and the limitations therein contained, and having regard to the laws of Illinois, a judgment against appellant as administrator could not have been rendered payable out of the general assets of the estate, but only out of after discovered assets not inventoried in two years from the dateof appellant's letters of administration. (Sec. 70, laws of Illinois, cited, page 29, our brief in chief.)

Shall an omission on the part of appellees to sue in an Illinois court, to recover a judgment on their Arkansas decree place appellees in the vantage ground of depriving appellant of the defenses he might have made to a suit brought by them in some court in Illinois? The statement of the case should refute the position of appellees in this regard.

II.

APPELLEE'S DECREE IS NOT ONE IN PERSONAM, BUT IS IN THE USUAL FORM OF JUDGMENTS AGAINST ADMINISTRATORS, PAYABLE DE BONIS TESTATORIIS.

Appellees seek to give their decree an extra territorial force by saying it is a judgment *in personam*, and so operative everywhere, and not merely within the limits of Arkansas.

The decree rendered in the Arkasas court, would in Arkansas be deemed a decree in the usual form against an administrator, payable *de bonis testatoriis*, and nothing else or more, in other words, a decree against appellant in his representative capacity only.

Stone, Admnr. v. *Kaufmann*, 25 Ark., 186.

The decree of the Arkansas court should not have any broader force when before an Illinois court, than it would have in Arkansas where rendered. The constitutional provision as to faith and credit mentioned in our argument in chief, is satisfied when an Illinois court gives to the decree the same interpretation as was given to it by the decisions of the courts in Arkansas.

That interpretation makes the said decree, one against appellant, payable *de bonis testatoriis*. The decree thus interpreted has an extra territorial force, and reaches and binds assets being administered in Illinois if appellee's contention is right, and we have seen that such an effect the judgment of a sister state never can have.

But the frame of appellee's bill filed in the Circuit court of the United States at Chicago, shows that appel-

lees were suing appellant not *in personam*, but in his representative capacity, and their claim there made that appellant had been guilty of a "*devastavit*" and that out of that fact an individual liability to appellees existed, shows that appellant is sued as administrator and in a representative capacity.

The decree of the Arkansas court can not have any extra territorial force to bind assets being administered in Illinois, upon the authorities cited and no judgment having been obtained in Illinois by appellees, either on their decree or the original claim on which it was rendered, appellant was guilty of no *devastavit*. He appropriated the assets in Illinois as directed by the Probate court controlling him there—and only where some order of the last named court lawfully made—had been disobeyed, could the question of *devastavit* arise in connection with appellant's administration.

IV.

THERE IS NO QUESTION OF FRAUDULENT ACTS TO BE CONSIDERED UPON THE QUESTIONS OF DIVISION IN THE CASE.

A position of appellee (see page 14 of his argument) is that the appellant was guilty of fraud in procuring his discharge before the Probate court of Lake county, Illinois.

It should be a sufficient answer to this position to say—that the existence of any fraud is express lyexcluded by the questions certified.

But independently of this view, the allegations of appellee's bill do not make a case of fraud for these reasons:

Firstly. Appellant might properly have represented to the Probate court of Lake county, Illinois, that all debts of the estate were paid when all debts against the estate of Ballentine—allowed in the Lake county court—were paid.

Secondly. The County court of Lake county must have ascertained that all debts of that estate were paid before discharging appellant; and this made an adjudication of such fact by that court.

Thirdly. The discharge of an administrator in Illinois is only granted after public notice as required by law of an intention on the part of an administrator to apply for such discharge, and after opportunity given to oppose such discharge, (Sec. 112, Chap. 3, "Administration," 1 Starr and C., 42), and with such publicity there is no chance for a charge of fraud.

The element of fraud nowhere enters into that case.

V.

THE DECREE OF THE ARKANSAS COURT IS A DECREE AGAINST APPEELANT IN ITS REPRESENTATIVE CAPACITY.

That this decree is nothing but a decree against appellant in his representative capacity is the holding of the highest courts of Arkansas.

Stone Adm. v. *Kaufman*, 25 Ark., 186.

Appellees demand that it carry, under the constitution, the same faith and credit in Illinois that it has in Arkansas.

Concede this and these results follow:

1. That such decree has no extra territorial force.

2. That it could not bind assets of Ballentine's estate in Illinois of its own force.

3. That the most which could be claimed for it would be that it could be sued on in an Illinois court, as a judgment of a sister state, and be held, as in the case next cited (which was one of executors and not administrators), evidence of an indebtedness against the estate of Ballentine in Illinois, on which a judgment against said estate would be rendered in an Illinois court, the court in this case next cited expressly repudiating that such judgment could have any force extraterritorially.

Turley v. *Dryfus*, 35 La., An., 571.

We are not admitting this last position to be correct, as we hold that the decree of the Arkansas court could not be sued on in an Illinois court as such, but that any action in Illinois would have to be upon the original cause of action, on which the Arkansas decree was rendered.

It is evident that appellees cannot sustain themselves on the basis of their position in this regard.

VI.

Appellees build seemingly largely on the case of *Darling* v. *McDonald*, 101 Ill., 370, but this case is no authority in their favor.

It merely decides that the jurisdiction of the Circuit courts of the State of Illinois is fixed by the constitution of that state; and that a creditor may sue an administrator in the Circuit court in Illinois to establish his indebtedness and the amount thereof, and he is not limited to the county (probate) courts alone.

But this case is no authority for saying that the Arkansas decree of appellees executes itself in Illinois. Had appellees sued in a Circuit court in Illinois to obtain a new judgment against Ballentins,s estate in Illinois on their Arkansas decree, and a judgment been obtained in Illinois against appellant as administrator of Ballentine, which appellant had refused to pay, the case might have been cited as an authority. But we should even then have urged that the amount of appellees' claim being thus settled, they must yet have filed their judgment in the County court of Lake county, Illinois, to share in the assets of said estate, a question which their omission in this regard renders unnecessary to be settled.

The case in 101 Ill., last named, is no authority in favor of appellees on the facts of this case.

VII.

The allegations of complainant's bill furnish us all we know about a bill of review being filed in Arkansas. Appellees in argument admit that their bill of complaint so defines it, and the certificate of division so describes it.

But we imagine that no refining in argument as to whether the bill so defined as a bill of review was or was not such, or was in fact something else, can avail appellees here.

The salient facts as to said bill of review were that to obtain any standing—to have the former decree passed upon—appellant must have done as he did: viz: file his bill *as administrator*, because the original decree was against him in that capacity. Had he filed it individually he would have gone out of court for the variance.

The appellant, as administrator, filed his bill to have a review of the original decree. That was dismissed, and all that could be claimed was that the original decree was left as when rendered. The after-proceeding did not affect it in any way, and to argue that the dismissal of the bill of review broadened the effect of the original decree is against the authorities.

VIII.

A DECREE AGAINST APPELLANT INDIVIDUALLY IS NOT JUSTIFIABLE IN THIS CASE.

The scope of the case at bar must be determined by the allegations of appellees' bill of complaint as filed in Illinois.

The recovery, if any be had thereon, must be within the allegations of the bill.

The gravamen of the bill so far as a personal liability on appellant's part is concerned, is: Firstly, that the Arkansas decree of its own force bound the assets of Ballentine, being administered in Illinois; and,

Secondly, That being so binding, appellant was guilty of a *devastavit* in settling up the estate of Ballentine, in Illinois, without paying the Arkansas decree.

There could be no liability of appellant except upon the ground aforesaid.

But we think it clear that a *devastavit* in Illinois would have to be established in one of two ways and no other:

First, According to the course of the common law; this would require a suit against the administrator to establish the debt, and then a second suit and the verdict of

a jury therein finding him guilty of a *devastavit* and assessing the amount thereof.

Biggs v. *Postlewait*, Breese, Ill., 199.
Coblet v. *Carter's Ex.*, 2 Munf., 24.

Or, secondly, by a proceeding under Section 115 of the Administration Laws of Illinois, cited in our brief in chief. This requires an order of the Probate court on an administrator to pay money on demand—lapse of thirty days and failure to pay. This establishes *devastavit*.

Neither course having been here pursued—we assert that a personal judgment could not have been rendered in this case—against appellant on the basis of his being guilty of a *devastavit*, and hence, a judgment rgainst appellant individually is erroneous.

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Attys. for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1891.

No. 1067.

EDWARD F. LAWRENCE, AS ADMINISTRATOR OF DAVID BALLENTINE, DECEASED, AND IN HIS OWN RIGHT,
Appellant,

vs.

WILLIAM H. NELSON AND GEORGE M. FRENCH,
Appellees.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

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vs.

WILLIAM H. NELSON AND GEORGE M. FRENCH, *Appellees*.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

This is a suit in equity, which seeks to charge the appellant for having — as administrator appointed by a probate court of *Illinois* — improperly distributed the estate among the heirs, without paying a money decree recovered by appellees in the federal court in *Arkansas*. Mr. Justice Harlan and Judge Gresham, before whom the case was heard in the court below, disagreed as to the effect to be given in this suit to the Arkansas decree. The views of Mr. Justice Harlan being favorable to the complainants below, a decree was entered charging appellant,

personally, with the payment of the amount of the Arkansas decree; and the points of difference between the learned judges were certified by them for the purposes of this appeal by appellant.

The hearing in the Circuit Court was upon a general demurrer by appellant to the bill, and, the views of the Circuit justice prevailing, the demurrer was overruled. Thereupon, the appellant, for the purpose of avoiding the necessity of an accounting, made an admission in open court respecting the assets. The facts upon which the decree was entered, as thus admitted of record and by the demurrer, are as follows:

One David Ballentine died, May 10, 1878, leaving an estate consisting of real estate worth $190,000 and personal estate valued at $181,000, and creditors to the amount of $20,000, all of whom have been paid in the administration of the estate, except appellees. On July 2, 1878, an alleged will of Ballentine was probated in the County (probate) Court of Lake County, Illinois, and thereunder one James M. Ballentine became the executor. The validity of this will was subsequently contested by the heirs, and on the 10th day of January, 1880, said will and the probate thereof were set aside, and the appellant was by the same court appointed administrator, and, having qualified as such, he received from the executor personal estate of the value of $170,000.

The decedent, David Ballentine, in his lifetime, had been a partner with appellees in the ownership and management of a bath-house at the City of Hot Springs, Arkansas. The affairs of this partnership being, when David Ballentine died, unsettled, the appellees, on Nov 27, 1878, filed, in the United States Circuit Court in Arkansas, a bill in equity for a settlement and accounting of the part-

nership dealings against James M. Bellentine, as executor. In this suit the executor was personally served with process, and entered his appearance. When, subsequently, the probate of the will was set aside, and appellant appointed administrator, he, as such administrator, was substituted as the defendant, and voluntarily appeared and participated in the hearing upon the merits, without raising the question of jurisdiction or his legal capacity to be sued outside of the State of his appointment. Upon a final hearing of this suit, on July 25, 1882, the Arkansas federal court adjudged the appellant, as administrator of David Ballentine, to be indebted to the appellees in certain sums of money for their several shares in the profits of said partnership, and the appellant was decreed to pay said sums to appellees "out of the assets of the estate of said David Ballentine in his hands remaining to be administered." At the time of the entry of this decree, the appellant, as such administrator, had, after paying all other creditors, sufficient of the estate of David Ballentine remaining in his hands to be administered to satisfy it. After the entry of this decree, the appellant filed a petition for a re-hearing, which, on Nov. 30, 1883, was overruled. Shortly after this, and for the purpose, as the bill alleges, of avoiding payment of this decree in favor of appellees, the appellant, having first paid all the other creditors of the estate, represented to the probate court of Lake County that *all* debts of the estate had been paid, and proper distribution had been made among the heirs, and asked his discharge as administrator; and the probate court, relying on this statement that all debts had been paid, on the 24th of January, 1884, decreed a final settlement of the estate and discharge of appellant as administrator.

The appellant then filed, Nov. 3, 1884, in the same court in Arkansas, an original bill in the nature of a bill of review, in which he sought to have appellees enjoined from proceeding in the State of Illinois to collect the above decree, and asked that the same be reviewed and reversed, for the reasons:

1. That it was contrary to the evidence.

2. That it was rendered without service on appellant and without any opportunity to him to defend it.

3. Because of newly discovered evidence.

4. Because appellant, *being an administrator appointed, not by the courts of Arkansas, but by the courts of Illinois, could not be sued in Arkansas.*

By reason of this bill, and while it was pending, the appellees took no steps to collect their decree. But the court (Mr. Justice Brewer) having on the 16th day of April, 1888, dismissed said bill of review for want of equity, the appellees, on the 12th day of September, 1889, filed the present bill in the United States Circuit Court in Illinois, to collect from appellant the amount of the Arkansas decree.

The appellees never appeared in or presented their said claim to the probate court of Lake County or in any way became parties to the proceedings for the settlement of the estate in that court. Neither of them, prior to the settlement of the estate and the discharge of appellant as administrator, received any notice of the application for final settlement and discharge, or knew anything of such settlement or discharge, for more than two years after it was made, and the bill alleges that appellant purposely avoided giving appellees such notice or knowledge. While appellant claims to have distributed all the estate under said settlement, the bill

alleges upon information that he has retained, with the connivance of the heirs, sufficient to satisfy appellees' decree.

The appellant is made defendant in his individual capacity and as administrator, and the bill prays that the final settlement of the probate court be set aside as against appellees; that an accounting be had; and that, if upon such accounting it be disclosed that appellant still has assets of the estate sufficient to satisfy appellees' decree, they be so applied, and if no assets are disclosed in appellant's hands, that then he be decreed to pay, *de bonis propriis*, the sums mentioned in appellees' decree.

The theory upon which the decree in this case was entered rests upon three propositions:

1. That appellant, as administrator, was a trustee for the creditors of the intestate, and as such was by law required to pay the creditors before making distribution among the heirs.

2. That appellees were such creditors and *cestuis que trustent*.

3. That an administrator (trustee) by improperly closing the trust and distributing the estate to the heirs, without first paying the creditors, makes himself *personally* liable (as for breach of trust) to such creditors for the amount of their debts.

The first and third of the above propositions are not seriously controverted by appellant, and, in fact, do not arise upon the certificate of division.

To establish the second proposition, the appellees relied upon the original decree in Arkansas, which is claimed to have been rendered by a court having jurisdiction both of the subject matter and of the *person* of the appellant as *administrator*, and to establish conclusively,

as against appellant, the relation of appellees as creditors and *cestuis que trustent* of this estate.

This proposition was resisted in the Circuit Court by appellant:

1. On the ground that no jurisdiction of the person of the appellant, an Illinois administrator, could be acquired by the Arkansas court, even by appellant's personal appearance and waiver.

2. Even if the Arkansas court did acquire jurisdiction, the appellant was not obliged to recognize its decree in administering the estate in Illinois, until it had been presented and established as a claim in the probate court in Illinois, pursuant to, and within the time fixed by, the statutes of Illinois.

Besides denying the legal correctness of appellant's first point, the appellees replied that the question of the jurisdiction of appellant as administrator by the Arkansas court was, as between appellant and appellees, *res adjudicata*, because the question had been raised by appellant's bill in the nature of a bill of review, and had been decided adversely to appellant by a decree dismissing that bill for want of equity.

In the decision of the questions thus raised the learned circuit justice and circuit judge differed, and their points of difference were incorporated by them in eight questions, which, as we understand, furnish the limits of discussion upon this appeal. These questions are as follows:

" 1. Whether it was competent for the administrator " of David Ballentine, appointed under the laws of Illlnois, " to appear in the suit brought in the Circuit Court of the " United States for the Eastern District of Arkansas by " the plaintiffs herein, and submit himself to the juris-

" diction of that court in respect to the matters involved " in that suit.

" 2. Whether the binding force of the decree passed " in that suit July 25th, 1882, is any less by reason of the " fact that the defendant in that suit was the administrator " of the deceased, David Ballentine, under appointment " by the proper county court in Illinois, and did not exercise " the functions of such administrator under any appoint- " ment by the courts or tribunals of Arkansas.

" 3. Whether the final decree of the Circuit Court of " the United States for the Eastern District of Arkansas, " rendered July 25, 1882, and as set out in the bill herein, " is open to attack in the Circuit Court of the United " States, sitting in Illinois, simply upon the ground that " the defendant held his office of administrator of Bal- " lentine under the authority alone of the laws of " Illinois.

" 4. Whether the decree in the Circuit Court of the " United States for the Eastern District of Arkansas, ren- " dered July 25, 1882, is, in the absence of fraud, conclu- " sive upon the defendant herein upon the issue as to " whether the estate of Ballentine is indebted to the present " plaintiff and as to the amount of such indebtedness.

" 5. Whether the decree of the Circuit Court of the " United States for the Eastern District of Arkansas, " passed April 16, 1888, whereby the bill of review filed " in that court (as set in the bill herein) by the pres- " ent defendant against the present plaintiffs was dismissed, " being unreversed, is, in the absence of fraud, conclusive in " the present suit as to the amount due the plaintiffs from " the estate of Ballentine.

" 6. Whether the decree of July 25, 1882, recited in " the bill, is void, simply because it was rendered against

" an administrator appointed in Illinois, voluntarily appear-
" ing therein and submitting himself to the jurisdiction of
" the court rendering the decree.

" 7. Did the decree of the Circuit Court of the United
" States for the Eastern District of Arkansas, rendered
" July 25th, 1882, bind the defendant as the administrator of
" David Ballentine, deceased, appointed under the laws of
" Illinois, and the assets of the estate of said decedent in
" the State of Illinois in his hands as administrator, in the
" sense that the defendant was bound to pay said decree
" without further action against him or said estate by the
" complainants, and having settled said estate in and under
" the order of the County Court of Lake County, Illinois,
" and obtained his discharge as such administrator from
" said County Court without having paid said decree, is
" he, the defendant, now liable in this action?

" 8. Even if the decree of July 25th, 1882, aforesaid,
" was not binding in the sense last above-mentioned, did
" the said decree become binding in the sense last above-
" mentioned by reason of and upon the rendition of the
" decree of the Circuit Court of the United States for the
" Eastern District of Arkansas, on or about April 16,
" 1888, dismissing the bill of review in complainant's bill
" mentioned?"

As pertinent to these questions, and as sufficiently decisive of them * * * to warrant the affirmance of this decree, we make the following

POINTS.

I. Appellant was bound to pay the Arkansas decree, without its being established as a claim in the probate court of Illinois. The State statute * * * requiring the presentation within a certain time of all claims to that

court, does not apply to non-resident creditors resorting to federal courts.

Payne v. *Hook*, 7 Wal. 431.
Green v. *Creighton*, 23 How. 106.
Suydam v. *Brodnax*, 14 Pet. 72.
Union Bank v. *Jolly*, 18 How. 503.
Hartman v. *Fishbeck*, 18 Fed. Rep. 292.
Chewett v. *Moran*, 17 Fed. Rep. 820.
Hess v. *Reynolds*, 113 U. S. 76.
Darling v. *McDonald*, 101 Ill. 370.
Rosenthal v. *McGee*, 41 Ill. 370.

II. The Arkansas decree was *in personam*.

Stacey v. *Thrasher*, 6 How. 60.

It is also conclusive upon all defenses existing when it was rendered.

Darling v. *McDonald*, 101 Ill. 370.

The appellant was bound to pay the decree without further steps by appellees thereon.

Darling v. *McDonald*, *supra*.
People v. *Allen*, 8 Brad. (Ill.) 276.
Yonly v. *Lavender*, 21 Wall. 276.

If the Arkansas court acquired jurisdiction, full faith and credit * * * must in Illinois be given to it decree.

III. The Arkansas court had jurisdiction of the subject matter, both on the ground of trust and partnership accounting regardless of where the property was located.

Phelps v. *McDonald*, 99 U. S. 298.
Massie v. *Watts*, 6 Cranch, 298.
Cole v. *Cunningham*, 133 U. S. 107.
Johnson v. *Gibson*, 116 Ill. 294.

It also, had jurisdiction of the person.

Lawrence v. *Nelson*, opinion of Judge Brewer, atttached hereto.
Davis v. *Connelly*, 4 B. Mon. 136.
Gracie v. *Palmer*, 8 Wheat. 96.
Toland v. *Spray*, 12 Pet. 630.
Ex parte Scholenberger, 96 U. S. 376.
Butterworth v. *Hill*, 114 U. S. 130.

An administrator does not lose entirely his character as such, when he goes beyond the limits of the State appointing him.

Doolittle v. *Lewis*, 7 Johns. Ch. 45.
Gulick v. *Gulick*, 33 Barb. 92.
McNamara v. *Dwyer*, 7 Paige Ch. 239.
Brown v. *Brown*, 1 Barb. Ch. 189.
Field v. *Gibson*, 76. How. Pr. 232.
Johnson v. *Wells*, 112 N. Y. 230.

IV. The decree dismissing bill of review is conclusive upon appellant upon the question of jurisdiction.

Ark. Digest, 1874, sec. 4,473.
Roach v. *Rivitt*, 90 Ala. 391.
Semple v. *Glenn*, 9 So. Rep. 205.

That bill was not in reality a bill of review, but an original bill.

Central Trust Company v. *Grant Works*, 135 U. S. 207.
Richard v. *Powell*, 100 U. S. 104.
Ensininger v. *Power*, 108 U. S. 292.

V. The federal court in Illinois could and should disregard the settlement in the probate court, because fraudulently obtained.

Griffith v. *Goody*, 113 U. S.
Harrowsmith v. *Gleason*, 129 U. S. 86.
Johnson v. *Water*, 111 U. S.
Pratt v. *Northum*, 5 Mason 100.
Ridenbaugh v. *Burns*, 14 Fed. Rep. 93.
Speeds v. *Nelson*, 8 B. Monroe, 499.

ARGUMENT.

I.

Was the Arkansas decree binding on appellant, as administrator, without being established as a claim in the probate court in Illinois?

A statute of Illinois, which is set out at some length in appellant's brief, pp. 24–32, confers upon County Courts, in Illinois, probate jurisdiction in the settlement of decedents' estates, and, by the terms of that statute, this jurisdiction is exclusive. By one of its provisions, sec. 70, all claims not exhibited to the County Court within two years from the granting of letters testamentary, or of administration, shall be forever barred, except as to property subsequently discovered, or not inventoried. The appellees have never, under this statute, presented their claim to the County Court, nor have they, in any way, made themselves parties to the proceedings in that court. Their failure to comply with these provisions of the State statute is relied upon by appellant, as a legal excuse for distributing the estate among the heirs, without paying

appellees, as explicitly directed by the Arkansas decree. The question is thus raised as to the effect of such a statute upon the rights of non-resident creditors (such as these appellees were), and upon the jurisdiction of the federal courts.

In *Payne* v. *Hook*, 7 Wallace, 431, which was a bill by a distributee to compel the administrator to account and pay over to her her rightful share in the estate of a deceased brother, jurisdiction of the federal court in Missouri was denied by the administrator, " because, in that " State, exclusive jurisdiction over all disputes concerning " the equity and accounts of all administrators until final " settlement, is given to the local County Court," and resort must be had to that court, where administration was still in progress. But this court decided otherwise, saying: " The equity jurisdiction conferred upon the Fed- " eral Courts is the same as the High Court of Chancery in " England possesses; is subject to neither limitation or re- " straint by State legislation, and is uniform throughout the " different States of the Union. * * * It is well settled " that a court of chancery, as an incident to its power to " enforce trusts, and make those holding a fiduciary rela- " tion account, has jurisdiction to compel executors and " administrators to account and distribute the assets in " their hands."

In *Green* v. *Creighton*, 23 Howard, 106, a creditor filed a bill in the federal court, against an administrator, to enforce payment of his debt, and the question was " whether the fact of the pendency of the proceedings in " insolvency in the Probate Court ousted jurisdiction in " the Circuit Court of the United Staes?" Although such was the tenor of the State statute, this court answered the question in the negative, saying: " In the court of

" chancery, executors and administrators are considered as " trustees, and that court exercises original jurisdiction " over them, in favor of creditors, legatees and heirs in " reference to the proper execution of their trust."

In *Suydam* v. *Brodnax*, 14 Peters, 72, the statute of Alabama authorized the Orphans' Court of that State to declare a decedent's estate insolvent, and provided that thereafter no suit should be commenced against an administrator, except in certain cases not important here, and declared that all claims not presented to such court within a certain time should be forever barred, except as to after-discovered property. In that case an adjudication of an estate as insolvent under this statute was pleaded in abatement of an action brought against an administrator. This court held that plaintiff (a non-resident creditor), could not by such state statute be deprived of his right to sue in the federal court.

In *Union Bank* v. *Jolly*, 18 How. 503, a case arising under the same statute of Alabama, the bill was filed by a creditor against administrators to enforce a judgment recovered against them. After the bill was filled the estate had been adjudged insolvent under the above statute, but was still pending in the probate court. The defense was, that the claim was barred under the above statute, because not presented as therein prescribed; but this court decided otherwise, and gave the plaintiff a decree for the payment of the judgment before distribution to the heirs.

In *Hartman* v. *Fishbeck*, 18 Fed. Rep. 292, a statute of Wisconsin provided that all claims against a decedent's estate not presented to the state probate court within the time limited by the act, should be forever barred, and prohibited suits against administrators. That action was brought in the federal court upon a money

demand against an administrator, who pleaded that the claim had not been presented as, and within the time, required by the statute. But Judge Dwyer held that this statute could not deprive non-resident creditors of their right to resort to the federal courts, and that the statute was not a statute of general limitations, but was binding only upon those who were required to present their claims in the probate court.

In *Chewett* v. *Moran*, 17 Fed. Rep. 820, a bill was filed in the Michigan federal court by a mortgagee against the heirs of the deceased mortgagor to charge his estate in their hands with payment of a deficiency under a foreclosure decree. By a State statute, creditors were required to present their claims to the probate court within a certain time. The estate was closed and the administrator discharged, and the failure of plaintiff to present his claim to the State court was adjudged to be no defense, Judge BROWN saying that "the jurisdiction of the Federal Court "cannot be ousted or impaired by any provision of a State "law requiring creditors to appear before a State court "and present their claims, and that the limitation only "applied to such claims as are required to be proved under "the statute."

Hess v. *Reynolds*, 113 U. S. 76.

The case of *Morgan* v. *Hamlet*, 113 U. S. 449, is not in conflict with these cases. There a statute of Arkansas provided that "all demands not exhibited to the "executor or administrator, as required by this act, "before two years from the granting of letters, shall be "forever barred." And this statute was held to bar a suit in equity in the United States court. But that statute did not *restrict the remedy* of creditors to *State*

probate courts. One of its sections (Arkansas Statutes of 1874, sec. 100) provided "that *all* actions commenced "against an executor or administrator after the death of "testator or intestate shall be considered demands legally "exhibited against said estate." And this court only decided such statute to be a statute of limitations, applicable as well to non-resident as resident creditors.

But, even in Illinois, judgments and decrees of the State courts of general jurisdiction establish claims, and are enforceable against a decedent's estate, although such claims are not presented to the county court as, and within the two years, required by the probate act under consideration. This is upon the ground that the jurisdiction "of all cases in law and equity" conferred by the State constitution up the circuit courts, cannot be abridged by a statute conferring *exclusive* jurisdiction of suits against decedent's estates upon county courts.

Darling v. *McDonald*, 101 Ill. 370.
Rosenthal v. *McGee*, 41 Ill. 370.

It seems clear from the foregoing cases that, if the federal court in Arkansas acquired jurisdiction of the subject matter and the parties, it could not be deprived of the power of adjudicating upon the controversy between them by an Illinois statute vesting in the county courts of Illinois exclusive jurisdiction of such controversies. The statutes of Arkansas are equally powerless. It follows, necessarily, also, from these cases, that the force and effect of a decree entered by a federal court in the exercise of its general chancery jurisdiction, cannot be diminished or nullified by a State statute requiring such decree to be submitted to a State probate court for further adjudication thereon, To leave it to state courts to say what effect shall be given

to a decree of the federal court is to make such federal court subordinate to the state court.

The above cases also furnish a sufficient reply to the argument of counsel for appellant, that he could not be held *personally* liable for breach of trust in distributing the estate to the heirs without paying appellees' claim, because by the laws, both of Illinois and Arkansas, a *devastavit* does not occur till an order has been obtained in the state probate court. Such provisions doubtless control actions in state courts, but have no application to suits like the present one, in federal courts to charge an administrator as trustee with the misapplication of the trust estate. In entertaining such a suit, the federal court exercises its general chancery jurisdiction, which could not be abridged by a state statute requiring a non-resident plaintiff to first secure some order from a state court. The case of

Tate v. *Norton*, 94 U. S. 746

is not in conflict with this position—although so relied upon by appellant's counsel—as in that case the creditor had proved his claim in the state probate court, and thus submitted himself to the jurisdiction of, and the laws governing, that court.

II.

The scope, force and effect of the Arkansas decreee.

The original decree in Arkansas adjudged appellant, as administrator, to be indebted to appellees in certain sums, and decreed " that said defendant pay said several " sums to said complainants (appellees) out of the assets " of the estate of David Ballentine in his hands remaining " to be administered."

It is to be first noted that the court, by this decree, does not attempt to enforce any lien, or otherwise give

the decree any binding force, upon *property* in Illinois, or elsewhere, as claimed by appellant's counsel. The decree is against the defendant *in personam* and directs him to pay out of the trust estate, and could only be enforced by process or contempt proceedings against him. It did not, *ipso facto*, vest in appellees any title or estate in the trust property. In short, it was, as are all decrees in chancery, except under special statutes, a decree *in personam*, and not *in rem*. This has been distinctly decided in

Stacey v. *Thrasher*, 6 Howard, 60,

where this court, speaking of a judgment against an administrator like the one at bar, said: "This argument "assumes that the judgment is *in rem* and not *in personam*, "or that the estate has a sort of corporate entity and unity; "but this is not true, either in fact or in legal construction. "The judgment is against the person of the administrator, "that he shall pay the debt of the intestate out of the "funds committed to his care."

Again, if the Arkansas court had jurisdiction, this final decree disposed of all grounds of defense which appellant then had against a decree directing him absolutely and without qualification to pay appellees out of assets remaining in his hands to be administered. If, as appellant now claims, appellees were not entitled to such decree, because by the statutes of Illinois no claim could be paid out of such assets unless presented to the probate court of Illinois within two years from the granting of letters of administration, this was a defense which had accrued prior to, and existed at the time of, the entry of this decree, and as such was or should have been presented to the Arkansas court, and is now, by the force of such decree, *res adjudicata* between these parties.

This is settled in *Darling* v. *McDonald*, 101 Ill. 370, 376, where a suit was commenced in an Illinois circuit court within the two years, and judgment obtained directing payment "in the due course of administration;" but the claim was not within the two years presented to the County court, and it was objected that under the statute the executors were not authorized to pay any claims, unless so presented. But the objection was overruled, the court saying: "It is a sufficient answer to this, that the "Circuit Court of Richland County, a court of competent "jurisdiction, has adjudged otherwise, and ordered the "claim, as it is, to be paid in due course of administration. "* * * However erroneous it may have been, "the cause of action thereafter ceased to be the subject of "litigation, and it could no longer be questioned whether "the court was authorized to render the judgment as "it did."

Again, this proceeding does not profess to merely settle the amount due appellees under the partnership with appellant's intestate and leave its payment to be provided for by the probate court; but is an absolute direction to the administrator (trustee) personally, that he, out of the trust estate still remaining in his hands to be administered, pay the appellees the amount specified. Upon such a decree no further steps or application to any other court are contemplated or necessary. It imposed upon the appellant an absolute duty to pay, and in Illinois under such a decree no further action was required by appellees, as has been expressly decided in

Darling v. *McDonald*, *supra*,

where the Supreme court of Illinois, in defining the scope of a decree of the court of general chancery jurisdiction in

Illinois, which directed the judgment to be paid "in due course of administration," said: "Nothing therefore "remained for the executors to do but to obey the command "of that judgment,—pay the amount, in due course of "administration. * * * Since the executors were par- "ties to the judgment, they needed no further notice of its "existence. It was their duty to pay it, without further "notice or demand. * * * The Circuit Court "having original jurisdiction, unaffected by the statute "conferring jurisdiction upon the County Court, upon the "'cause in law,' it necessarily follows that it had power "to render a judgment therein binding upon the parties, "and power to enforce a judgment follows as a necessary "incident to the power to render judgment. * * * "Beyond all question, as a judgment of the Circuit Court, "it is entitled to payment in the due course of administra- "tion,—it is the duty of the County Court, in causing "settlement of the estate, to enforce its payment,—and that "court has no authority, in doing so, to impair the force "and effect of the judgment as the judgment of the Circuit "Court."

In *People* v. *Allen*, 8 Brad. (Ill.) 17, an action at law upon an administrator's bond, the defendant claimed that no *devastavit* had been committed by the failure to pay a decree rendered in a court of general chancery jurisdiction in Illinois, against the administrator "to be paid in due course of administration," because such decree had not been presented to and allowed by the County (probate) court; but the court sustained the action, saying: "The "filing of it in the County Court would serve no good pur- "pose with reference to its adjudication, for that court "could neither disallow or modify it, nor add to its force. "* * Jurisdiction of any other court to render a judgment

" against an administrator, as such, includes power to en-
" force its judgment without dependence npon the County
" Court. True, it has no power to award a *fieri facias*
" against the assets — and the County Court is equally
" powerless — but no reason is perceived why it may not
" deal with the administrator personally for any contempt-
" uous disregard of its order. The decree * * estab-
" lished the amount of the indebtedness of the estate to
" the plaintiff, and the obligation of the defendant to pay
" it in due course of administration as effectually as could
" the order of the County Court."

So, in *Yonley* v. *Lavender*, 21 Wallace, 276, in construing the effect of a judgment in the federal court against an administrator, this court said: " It fixed the status of " the party and compelled the administrator to recognize " it in the payment of debts."

Congress has not conferred upon federal courts the power to appoint administrators, the proceedings for that purpose being *ex parte* and not a controversy *inter partes*. The State courts, alone, can appoint an administrator, but when appointed, he is a trustee for creditors and legatees, whether resident or non-resident of the state of his appointment. As such trustee, he is, however, subject to the decree of any court which has jurisdiction to control the administration of trusts and can acquire jurisdiction of his person.

This jurisdiction of several courts over the distribution of one estate may make possible conflicts of jurisdiction, and may result in such estates not being so conveniently administered as if one court were vested with the entire jurisdiction thereof. If so, there is no help for it, except by an amendment to the federal constitution, and (in the State of Illinois), of the state constitution.

Such inconveniences do not result necessarily from the *existence* of such dual jurisdiction, but will arise, if at all, only from the way such jurisdiction is *exercised*, and need not result at all, if each court will act with due regard to the jurisdiction of the other. Each court administers the same law, viz.: that of the state where the administrator is appointed, and will presumably make the same application of that law to the rights of a particular creditor. The federal courts have already refused to issue executions on their judgments against administrators and executors, because it would tend to embarrass the proper administration of estates; and in this particular case the state probate court doubtless would have recognized this Arkansas decree, had not knowledge of it been wrongfully suppressed by the administrator in the representations made by him to that court to secure his discharge. In practice, although this dual jurisdiction has existed since the formation of the government, no serious inconveniences or conflicts have yet arisen.

The federal courts have not yet been called upon to decide what steps they will take to secure from state probate court a proper recognition of their judgments and decrees, if not voluntarily accorded by the latter courts As is said by this court in *Yonley* v. *Lavender*, 21 Wallace, 282, when speaking of possible discriminations against non-resident creditors: "If this should unfortunately ever "happen the courts of the United States will find a way in "the proper case to arrest a discrimination and to enforce "equality of privileges among all classes of claimants, even "if the estate were seized by operation of law and entrusted "to a particular jurisdiction." But the question of possible conflicts of jurisdiction between the courts need not be considered further here, as it does not arise under the

decree in this case. Here, the appellant not only defiantly disobeyed the decree of the federal court of Arkansas, but, by suppressing that decree, perpetrated an imposition upon the state probate court, and the federal court of Illinois properly asserted the authority of the federal court in Arkansas, by charging the appellant, *personally*, with the payment of appellees' decree.

Appellant's counsel seek to avoid the effect of the Arkansas decree by placing upon it a construction by which they claim it binds only assets located in Arkansas. This question does not seem to arise upon the certificate of division. But, if we are wrong in this, the point is answered by a reference to allegations of the present bill, from which it will appear that appellant was sued in Arkansas only as an Illinois administrator; that all the estate of David Ballentine is shown to have come first to the executor appointed by the Illinois court, and subsequently to the appellant as the appointee only of that court. The record nowhere shows that any of these assets were actually located in Arkansas; and, if such were the case, when they reached the hands of the appellant as an Illinois administrator, they became Illinois assets and part of the Illinois administration. Besides, as we have already shown, the decree is not one *in rem* against assets either in Arkansas or in Illinois, but *in personam* against the Illinois administrator, and it directs payment, not out of assets located in Arkansas, but generally out of "the assets of the estate of David Ballentine" in appellant's hands as Illinois administrator "remaining to be administered." There might be ground for placing appellant's construction upon this decree if appellant had been also appointed an administrator in Arkansas, which is not the case.

From what has been above stated, we believe it to be

conclusively demonstrated that if the Arkansas court had jurisdiction, the effect of its decree of July 25, 1882, within the territorial limits of its jurisdiction, was to conclusively establish as against appellant the status of appellees as creditors of the trust estate, and the duty of appellant, as such trustee, to pay their debts out of the trust estate. What effect, then, is to be given to it in the present suit in the State of Illinois? The answer to this is to be found in the Federal constitution, requiring full faith and credit to be given in one state to the judicial proceedings of any other state, and the act of Congress under this constitutional provision exacting for such proceedings such faith and credit in every court within the United States as they have by law or usage in the courts of the state in which they occur. That is, in the present case, the federal circuit court in Illinois is required to give to the Arkansas decree the same force and effect, which, as we have just seen, it has in Arkansas.

These provisions of the constitution and federal statute do not require states to permit executions issued upon judgments of other states to be executed within the limits of the former. Nor do they prohibit state legislatures from enacting that judgments against a *decedent* recovered in their own courts shall, but that judgments recovered in other states shall not, enjoy a priority over simple contract creditors in the distribution of decedent's estate. For this would not be giving to the foreign judgment the effect which it had in its own state, but the placing of foreign judgments on the same footing as home judgments, which is beyond the intention of the above constitutional and statutory provisions. It is, also, beyond what is requisite to support appellees' position as to the effect of the Arkansas decree. We, therefore, pass over the cases

cited by appellant upon this point without special reference thereto.

The effect in Arkansas of this Arkansas decree is to be determined by a reference to the general rules of law governing the force and effect of judgments and decrees. No authorities need be cited on the proposition that in a subsequent suit between the same parties in Arkansas a decree is conclusive upon all the facts and rights which it undertakes or professes to decide. But, an essential pre-requisite is, that both suits should be between the *same* parties or their privies. That requirement is fulfilled in the present case. The appellant was sued in Arkansas, and is sued in the present suit as an administrator appointed by the Illinois court. But it does not exist where a judgment against an administrator appointed in one state is relied on as establishing the debt against another administrator appointed in another state. In such case the suit is not between the same parties, nor is one administrator privy to the other; and the rule is obviously the same, although the same individual may be appointed as administrator in both states. For the suit in each case is against him in his representative capacity, which is different in the different states, and it is immaterial that, as an individual, he is the same person. These principles are so clearly elucidated, and the distinction between such cases and the present one are so plainly drawn by this court in *Stacey* v. *Thrasher*, 6 Howard, 60, and by the Massachusetts Court in *Low* v. *Bartlett*, 8 Allen, 259, that we pass the numerous cases of this character referred to in appellant's brief without further or special comment.

III.

Did the Arkansas court have jurisdiction to render the original decree?

This, we think, the main question in this case. If jurisdiction existed, the decree of the Arkansas court, given the effect which we have shown it is entitled to, is conclusive against appellant upon the real controversy here involved. If jurisdiction was not acquired, then appellees failed to establish their case, unless the decree of the Arkansas court dismissing the bill of review has conclusively settled the question of jurisdiction in their favor, which will be discussed under our next point.

1. Jurisdiction of the *subject matter*, the Arkansas court, possessing, as it did, general chancery jurisdiction, clearly had, both because that suit involved the accounting and settlement of a partnership—a well recognized head of chancery jurisdiction—and, because it was a controversy between an administrator (trustee) and creditors (*cestuis que trustent*) in reference to the trust estate. Jurisdiction of the subject matter existed none the less, because the trust estate was not situate in Arkansas, and this would be so, if the trust estate were land instead of personal property.

Opinion of Mr. Justice Brewer, hereto annexed.
Massie v. *Watts*, 6 Cranch, 148.
Cole v. *Cunningham*, 133 U. S. 107.
Johnson v. *Gibson*, 116 Ill. 294.

2. Jurisdiction was acquired of the *person* of appellant. An administrator, although appointed by the state court, is, as we have seen, a trustee accountable in all courts having jurisdiction of trusts. He is not a receiver of the probate court appointing him. For, if a receiver,

then, according to the settled rule, no suit could be brought against him without the permission of that court, either in the courts of Arkansas (a foreign state) or in the federal or state courts of general jurisdiction in the State of Illinois, which is contrary to the authorities already cited.

We concede that this administrator, although personally found in Arkansas, was so far exempt from service of process there that, had he raised *in limine* this question, the Arkansas court must have disclaimed jurisdiction. That court itself so decided, as will appear from the opinion delivered by Mr. Justice Brewer in dismissing the bill of review herein, which opinion, as it does not appear to have been reported, we take the liberty of printing at the end of this brief. This, also, is all that is decided by this court in *Vaughan* v. *Northrup*, 15 Peters, 1; *Mellow* v. *Thompson*, *Caldwell* v. *Hardy*, *Durril* v. *Blowvelt*, *Peal* v. *Phipps*, *Goodwin* v. *Jones*, and other cases cited in apellant's brief.

We concede, also, that the Arkansas court might *suo motu* have raised this question and declined to entertain jurisdiction, because the courts of a state permit a foreign administrator to become a litigant before them only by way of comity, and the statutes of Arkansas *require* the exercise of this comity by its courts only in cases where such representative is plaintiff. This is all that is decided in *Sloan* v. *Sloan*, 21 Fla., cited by appellant's counsel.

It may, also, be conceded, at least for the purposes of this argument, that if a foreign administrator, although served with process, *has not personally appeared*, no jurisdiction would be acquired of him, because *no legal service* of process can be had upon him. Such was the case of *Rentschler* v. *Jamieson*, 20 Mo. App., cited by

counsel; but, to the contrary, see *Johnson* v. *Jackson*, 56 Ga. 326.

But the question here is, whether this administrator, by voluntarily appearing and submitting his case upon its merits to the Arkansas court, and thus availing himself of the comity of the State of Arkansas, has not thereby conferred upon that court jurisdiction of his person. The opinion of Mr. Justice Brewer, which is printed at the end of this brief, is a direct authority for the affirmative of this proposition.

Another authority therefor is *Davis* v. *Connelly*, 4 B. Monroe, 136, which was an action in Kentucky against executors appointed there upon a judgment recovered against them in Ohio. To their plea of want of jurisdiction in the Ohio court, plaintiff replied that they had entered a voluntary appearance; that thereby they had become executors *de son tort*, and were estopped now to deny it. The replication was adjudged good, and while the court placed its decision primarily upon the ground that by permitting themselves to be sued in Ohio, the defendants had made themselves executors *de son tort* in that state, that is, Ohio executors, the decision was, also, placed upon the point now under discussion, the court saying: "It "seems to us, finally, that the objection now made to the "jurisdiction, is grounded on a mere personal privilege, "which, if it ever existed, might have been and was positively waived or lost by not being asserted in time."

As overcoming the force of these decisions, appellant's counsel rely much on *Judy* v. *Kelley*, 11th Ill. But that was an action brought in Illinois to enforce against *the estate* a judgment obtained against an Illinois administrator in Ohio, and this was not permitted by the Illinois court, although the administrator had appeared and sub-

mitted himself to the jurisdiction of the Ohio court. Were the present decree against appellant *as administrator* and to be paid out of David Ballentine's estate, that case would be in point here; but this decree is not of that character, but charges appellant personally. The reasoning of the court in *Judy* v. *Kelley*, indicates that had the suit there, as here, sought to charge the administrator personally, the decision of that court would have concurred with the views of Mr. Justice Brewer; for the court in that case, in speaking of administrators, say: "Their "authority is limited and when they exceed it their action "will not bind the estate. The appearance being wholly "unauthorized by our laws, the judgment which resulted "from *it is not binding on the estate. If binding here "for any purpose, it is against the plaintiff in error per-"sonally.*"

(The italics are ours.)

Again, the statutes of Illinois are silent upon the right of the Illinois administrator, either to sue or be sued in another State. *Judy* v. *Kelley* is not, therefore, binding upon the federal courts as a construction by the state court of a state statute. It is a question of general law, which this court is free to decide for itself

It will undoubtedly conduce to the convenient administration of decedents' estates to exempt administrators from suits in other states. But is not this object sufficiently attained by confining it to cases where the administrator asserts his exemption and does not submit himself to the foreign jurisdiction? When he consents to a trial by the foreign court, it will be either because the interests of the estate justify it or because the administrator is recreant to his trust. If the latter, no person interested in the estate is prejudiced by a decree, as here, against the administ-

ra tor personally, and if any such prejudice should arise, a sufficient remedy exists, as in other cases of malfeasance, against the administrator or upon his official bond. Cases of diverse parties may arise, where, to acquire jurisdiction of other necessary parties, suits would have to be brought in a foreign jurisdiction, and the estate might be prejudiced if the administrator could in no case appear as a defendant in such suit.

The view of Mr. Justice Brewer best conduces to the maintenance of that spirit of comity which a court of one jurisdiction should indulge toward that of another. It will better inculcate the respect which litigants should have for courts. It is more consonant with the spirit which actuated that clause of the constitution requiring that " full faith and credit " be given in one State to the judicial proceedings of another. It appeals more strongly to a sense of right and justice; it less encourages trickery and evasion, and in many cases, as in the present one, it will prevent extreme hardship. These appellees have a just debt against this estate, and the estate was amply able to pay them. In the litigation in Arkansas they have incurred a large expense, and appellant should now be estopped from nullifying the result of that litigation, because it chanced to be adverse to him. He availed himself of the comity of the State of Arkansas, and should now abide the result. To hold otherwise, would be, as stated by Mr. Justice Brewer, to allow him to " speculate upon the chances of a favorable decision upon the merits," without any risk to himself. This is but trifling with the administration of justice.

The analogies of the law support Mr. Justice Brewer. The federal statute, providing that a defendant could only be sued in the district of which he is an inhabitant or

where found, has been held an exemption which he might waive.

Gracie v. *Palmer*, 8 Wheat. 699.
Toland v. *Sprague*, 12 Pet. 300.

A corporation of one State cannot be sued in another, unless transacting business there. The corporation, however, may waive this, and then jurisdiction exists to render judgment.

Ex parte Scholenberger, 96 U. S. 376.
McCormick v. *Penn. R. R.*, 49 N. Y. 303.

No reason exists why this should not be applied to one in a representative capacity. See *Butterworth* v. *Hill*, 114 U. S. 130, where the United States Commissioner of Pensions was sued in Vermont, and jurisdiction was denied because the act of the commissioner was not deemed a voluntary appearance.

The contrary view would deserve more consideration if it were true that an administrator, by the very act of going beyond the limits of the state appointing him, thereby, absolutely divests himself, when so absent, of his official capacity under all circumstances, and for all purposes. But this is not so. He may receive property or payments of debts in a foreign State, and receipts there given by him for such debts would be valid. It has been held that he can foreclose a mortgage in a state whose laws do not permit him to sue in its courts, if a judicial foreclosure is not necessary.

Doolittle v. *Lewis*, 7 Johns Ch. 45.

So, a foreign administrator, though not ordinarily liable to suit in a foreign state, may be proceeded against in equity under certain circumstances; as, for instance,

where it is necessary to prevent waste of property brought within the State and secure its application to the payment of decedent's debts according to the law of the state appointing the administrator.

Gulick v. *Gulick*, 33 Barb. 92.
McNamara v. *Dwyer*, 7 Paige Ch. 239.
Brown v. *Brown*, 1 Barb. Ch. 189.
Field v. *Gibson*, 56 How. Pr. 232.
Johnson v. *Wallis*, 112 N. Y. 230.
Johnson v. *Jackson*, 56 Ga. 326.

So, an administrator may sue in a foreign jurisdiction, if the comity of that jurisdiction permits him to; that is, he there retains his representative capacity with the consent of the courts of that jurisdiction. Manifestly, this could not be, if by the laws of the state of his appointment, he was an administrator only within the boundaries of that state.

IV.

The decree dismissing the so-called bill of review, is conclusive upon appellant upon the question of jurisdiction.

This bill was filed by appellant Nov. 3, 1884, to reverse the original decree of July 25, 1882, upon the ground (among others), that *appellant being an administrator appointed by a court not of Arkansas, but of Illinois, could not be sued in Arkansas.* The Circuit Court of Arkansas (Mr. Justice Brewer presiding) on April 16, 1888, dismissed this bill for want of equity. Nearly ten months before the filing of this bill, the appellant had ceased to be administrator and obtained his discharge as such from the County Court of Lake County. The bill, however, was

filed by him as administrator. Treating it, for the present as a bill by him as administrator, it will be conceded that an Illinois administrator, if incapable of being sued in Arkansas, has capacity to *sue* there. By the statutes of Arkansas a foreign administrator may institute suits in that state. See Arkansas Digest, 1884, sec. 4937.

This is not to be confined to cases wherein the administrator is plaintiff in an independent suit originated by him. If, in the original suit in Arkansas, the appellant, as administrator, had filed a cross-bill, and upon that a decree had been entered, that decree would not certainly have been void for want of jurisdiction of appellant. Treating, then, this bill as in legal effect a bill of review, and, as such, but a part of the original suit, the appellant thereby availed himself of the leave given by the statute of Arkansas to sue in that state. Having done this, the Arkansas court had jurisdiction, and its decree against him is conclusive upon the question there raised—which is the identical one here discussed—that of jurisdiction of appellant in the original suit.

Where a court originally has not jurisdiction of the person, its judgment or decree is not binding, although such court in rendering such judgment or decree necessarily decides in favor of its own jurisdiction. But, if the defendant comes into that court and voluntarily submits for decision the question of jurisdiction over him, the decision of the court in favor of its jurisdiction is then conclusive, especially where, as here, the question is raised by an affirmative proceeding, or suit by the defendant for that purpose.

Roach v. *Privett*, 90 Ala. 391.

Semple v. *Glenn*, 9 So. Rep. (Ala. 1891) 265.

In the first case, judgment being rendered in the *nisi prius* court without jurisdiction of the person, the defendant took an appeal, and the judgment having been affirmed on the appeal, was held to be conclusive in a collateral suit on the question of jurisdiction. In the second case, upon a bill filed in Virginia, a defendant corporation was summoned by process served upon certain of its officers, and the bill taken as confessed against the corporation. Subsequently a petition was filed in that suit calling directly in question the validity of the service on the corporation. The lower court adjudged the service valid, and this was affirmed by the Court of Appeals. Subsequently suit was brought on this decree in Alabama, where the question of the validity of service on the corporation was again raised, but the Alabama court decided that the decision of the Virginia court upon this question was conclusive.

If the law as to the jurisdiction of the Arkansa court to render the original decree be as claimed by his counsel, the appellant had the choice of two courses. He might have treated as a nullity the Arkansas decree when sued thereon in Illinois, or he could have availed himself of the privilege of the Arkansas statutes to *sue* in that state, and there affirmatively ask that this decree be set aside for want of jurisdiction. Since he adopted the latter course, and by his bill raised and had decided against him the identical question of jurisdiction discussed here, a clear case is here presented for the application of the doctrine of *res adjudicata*.

We have thus far treated the bill, as did appellant, as a bill of review. It is also so termed in the present bill. But this admission of counsel on a question of law does not conclude appellees and make the bill for the purposes of

this appeal a bill of review, if in fact it is not one. In point of law, this bill is neither a bill of review nor in the nature of a bill of review, the latter differing from the former only in that the latter is a bill filed before, and the former a bill filed after, the decree has been signed and enrolled. A bill of either class must be filed within two years after the entry of the original decree.

Thomas v. *Brockenbrough*, 10 Wheat. 147.
Central Trust Company v. *Grant Works*, 135 U. S. 207.
Ricker v. *Powell*, 100 U. S. 104.

This bill not having been filed until more than two years after the entry of the original decree, was, therefore, neither a bill of review, nor in the nature of a bill of review, but an original bill, and so in effect Mr. Justice Brewer decided. We have, then, here, an original suit in which appellant is plaintiff. More than that, we have a suit by appellant, not as administrator — he had ceased to be such — but as an *individual*. It is therefore difficult to conceive why a decree, in such a suit adverse to appellant, is not *res adjudicata* upon this question of jurisdiction in the present suit, where, also, the appellant is not charged as administrator, but in his *individual* capacity.

V.

The settlement and the discharge of the administrator in the probate court.

Appellant's counsel seem to rely upon this as a bar to the present suit. If this question fairly arises under the certificate of division, it is easily answered. If our position is correct, that appellees were creditors of this estate whom it was the duty of appellant to pay, then this pro-

curing a settlement and discharge by the probate court upon the representation that all debts had been paid was a fraud, and the federal court in Illinois has undoubted jurisdiction to set aside orders and settlements in the probate court which are fraudulently obtained.

Griffith v. *Godey*, 113 U. S. 89.
Arrowsmith v. *Gleason*, 129 U. S. 86.
Johnson v. *Waters*, 111 U. S. 640.
Pratt v. *Northam*, 5 Mason, 100.
Ridenbaugh v. *Burnes*, 14 Fed. Rep. 93.
Speeds v. *Nelson*, 8 B. Monroe, 499.

We therefore respectfully submit that the questions in the Certificate of Division should be so answered as to affirm this decree.

HENRY S. ROBBINS,
Counsel for Appellees.

EDWARD F. LAWRENCE, Admr.,
vs.
WM. H. NELSON et al.

OPINION.

BREWER, C. J.

This is a suit to set aside a decree. The decree was rendered in this court in July, '81. This bill was filed November 3, 1884; as a bill of review, it is manifestly too late, and can only be sustained as an original bill in the nature of a bill of review.

Three grounds of attack upon the decree are presented: First, that the defendant being a foreign administrator should not be sued in the courts of this State; second, he was never served with process and never en-

tered his appearance; third, that upon the facts the decree was erroneous.

The plaintiffs in that suit were citizens of this State; one David Ballentine died on the 10th of May, '78, at Hot Springs, in this State, leaving a will. That will was probated in Cook County, Illinois, that place being claimed as his domicile. James M. Ballentine was appointed executor and duly qualified. While temporarily present in Hot Springs the plaintiffs commenced that suit against him as executor, and caused process to be personally served. He filed an answer setting up a defense on the merits.

Subsequently, and in January, 1880, by proper proceedings in the Cook County Court, the will was set aside, and Edward Lawrence, the present complainant, duly appointed administrator *de bonis non*. In July, '81, on suggestion of a counsel for plaintiffs, this administrator was substituted as party defendant in place of the executor, and the same month final decree was entered against him. No plea in abatment was ever filed, no suggestion made to the court of the lack of jurisdiction over the defendant, but the cause was tried and determined upon the merits.

Now, the contention is, that the decree was void, because an administrator can neither sue or be sued without express legislative sanction in the courts of a State other than that in which he is appointed. Conceding the general proposition that an administrator cannot act outside of the limits of the jurisdiction appointing him, though the authorities are not in absolute accord on this question, can advantage be now taken of this? It may be noticed in passing, that the Legislature of Arkansas has given ex-

press authority to a foreign administrator to sue. See Ark. Digest, 1874, section 4,473.

It may be that authority to sue carries with it a liability to be sued.

Clopton v. *Booker*, 27 Ark. 482.

But I rest nothing on this. I concede that if the matter had been properly presented, the fact that the defendant was a foreign administrator would have been a perfect defense to the suit in this court, but such a defense is not one resting in the subject matter of controversy, but in the parties; hence it must be raised by plea in abatement, or at least in some other way called to the attention of the court before inquiry and judgment on the merits. Here the subject matter of the controversy, a dispute between partners, was within the unquestioned jurisdiction of the Circuit Court. Process was personally served. Now if there existed any defense it depended solely upon the matter of parties; it was the duty of the defendant to plead that defense. It would be strange if neglecting to plead such a defense and submitting the merits to judicial determination he could thereafter raise the question. A party may not thus speculate upon the chances of a favorable decision upon the merits. Take this illustration:

Suppose a bill is filed by A, a citizen of Arkansas against B, also a citizen of Arkansas, involving no federal question; of such a case this court has no jurisdiction. But suppose in his bill A alleges that he is a citizen of Missouri; defendant, instead of raising the question of lack of jurisdiction on account of citizenship, pleads to the merits. After decree against him will it be tolerated in him to say that the court has no jurisdiction because of the matter of citizenship? Surely the statement of such a

proposition carries its own answer. It may be considered as a settled law not only in this court, but in all others, that where the court has jurisdiction of the subject matter of the controversy and process has been personally served, then every defense outside of a plea to the merits is waived by such a plea, and cannot after adverse judgment thereon be invoked. This is unquestionably the general rule and whatever exceptions there may be, if any, to it, do not include a case like this. So although, I assume, without deciding that such a plea, if presented, would have been a perfect defense, it must be held that having gone to trial upon the merits it cannot now be presented.

The second matter is this: The present complainant insists that he was never served with process, nor authorized the entry of his appearance. In the former case, as heretofore stated, the suit was commenced against the executor and process personally served. Counsel duly employed filed answer of such executor. After the will had been set aside and the present complainant appointed administrator, this fact was suggested to the court and the suit revived in his name as administrator. The same counsel continued to conduct the defense. After decree and in August, '82, they filed a petition for a rehearing, which, in November, '83, was overruled. At the time of his appointment, as he himself testifies, he knew of the pendency of this suit against the estate; he consulted with the counsel conducting the defense, paid their charges for services, was cognizant of the fact that a petition for rehearing was presented. It may be true, as he says, that he was ignorant of the fact that, after his appointment, his name was substituted, and that the suit was carried on in his name, and the petition for a rehearing filed in his name,

but that is immaterial. He knew that the suit was against the estate, and, as a matter of law, he must have known that, upon a change of representatives of such estate, there would or might be a change in the name of the party defendant as such representative. The letters received by him, as well as the letters sent by him to counsel, show that he was cognizant of all that was being done, except the mere fact of the substitution of his name as representative of the estate, and knowledge of that he is, as a matter of law, charged with.

Now, it is familiar in law that if a party is cognizant of the fact that a suit is being prosecuted in a court against him, and that a defense is being made by counsel for him, if he corresponds with counsel as to the proceedings taken and to be taken, and pays them for their services, the judgment finally rendered is conclusive against him, and he is estopped to say that no process was in fact served upon him, and that he never formally authorized the appearance of such counsel. Good faith requires that the moment he knows counsel are acting for him he presents to the court a repudiation of their action; otherwise he will be assumed to consent, and is bound by what they do. Indeed, a perusal of the letters passing between counsel and himself, many of which are in evidence, show that this matter of repudiating their authority is wholly an afterthought. Doubtless he believes as he states, that the decree against the estate is grossly erroneous, and is seeking to make every, even technical, defense against it; but it must be borne in mind that the suit was against the estate, and he, as its representative, knew that it was pending, knew that steps were being taken to defend the estate, consulted with counsel, and paid them for their services. He may not now say

that he failed to authorize the substitution of his name as representative of the estate.

The third matter requires but a word. It matters not how erroneous the conclusions of the court may be upon the facts, its decree cannot be attacked in this way collaterally. The only remedies which the beaten party has are a bill of review or an appeal. The fact that he also attacks the jurisdiction in no manner gives a right to collaterally investigate the question of error, so I have not examined that question; it is enough that a court of common jurisdiction has once passed upon the questions of fact, and no bill of review was filed and no appeal taken.

A decree will be entered dismissing the bill.